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Tuesday 30 January 2007

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Mardi 30 janvier 2007

Standing committee on social policy

Long-Term Care Homes Act, 2007

Comité permanent de la politique sociale

Loi de 2007 sur les foyers de soins de longue durée

Chair: Ernie Parsons
Clerk: Trevor Day

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 30 January 2007

Mardi 30 janvier 2007

The committee met at 0931 in committee room 1.

LONG-TERM CARE HOMES ACT, 2007

LOI DE 2007 SUR LES FOYERS DE SOINS DE LONGUE DURÉE

Consideration of Bill 140, An Act respecting long-term care homes / Projet de loi 140, Loi concernant les foyers de soins de longue durée.

The Vice-Chair (Mr. Khalil Ramal): Good morning, ladies and gentlemen. It's about 9:30 on Tuesday, January 30, 2007. Welcome back to the social policy committee. Scheduled for today is clause-by-clause consideration of Bill 140, An Act respecting long-term care homes.

The clerk suggested that I read this: "When a bill is considered in a committee, the Chair shall enquire whether any comments, questions or amendments are to be offered and to which sections and will call only such sections. If no sections are so designated, the bill shall be reported as a whole."

Mrs. Elizabeth Witmer (Kitchener–Waterloo): I have submitted my amendments.

Ms. Shelley Martel (Nickel Belt): I have submitted my amendments as well.

Ms. Monique M. Smith (Nipissing): We have submitted our amendments as well.

The Vice-Chair: We'll start with section 1, and the NDP.

Ms. Martel: I move that section 1 of the bill be amended by striking out "may" and substituting "shall."

This is in the fundamental principle and interpretation part of the bill. The fundamental principle is clear that a long-term-care home is the home of its residents and it's to be operated in a way to guarantee their safety and their comfort and their dignity, and I think we send a much stronger message that we are committed to that by removing the word "may" and making it clear that they "shall."

The Vice-Chair: Further debate?

Ms. Smith: We oppose this amendment. We think that "may" gives the flexibility to the residents to do as they choose. "Shall" would be requiring a resident to live in a certain way. We think "may" allows them to live as they choose, which is the fundamental principle of this legislation: that it be resident-focused.

The Vice-Chair: Further debate? Are we ready for the vote?

All those in favour of the amendment? Opposed? It's lost.

Amendment number 2, by the NDP.

Ms. Martel: I move that section 1 of the bill be amended by adding "and have their physical, psychological, spiritual and cultural needs met" after "comfort."

This amendment was proposed by the Ontario Health Coalition, by OPSEU and by CUPE. It further strengthens what we anticipate residents should be entitled to have and to expect when they live in a long-term-care home.

The Vice-Chair: Any further debate?

Ms. Smith: If Ms. Martel is amenable, I propose a friendly amendment to that: "That a long-term care home is primarily the home of its residents"—so we would add the word "primarily"—"and have their physical, psychological, social"—add the word "social"—"spiritual and cultural needs adequately met."

The Vice-Chair: Any further debate?

Ms. Martel: That's fine with me, Chair.

The Vice-Chair: We need an amendment to the NDP amendment.

Ms. Smith: Okay. I move the following friendly amendment. That section 1 read:

"The fundamental principle to be applied in the interpretation of this act and anything required or permitted under this act is that a long-term care home is primarily the home of its residents and is to be operated so that it is a place where they may live with dignity and in security, safety and comfort, and where their physical, psychological, social, cultural and spiritual needs are adequately met."

I have moved that as an amendment to motion number 2.

The Vice-Chair: Can you move it and write it?

Ms. Smith: In writing—sorry?

The Vice-Chair: Yes, in writing.

Ms. Smith: I move that section 1 of the bill be amended by adding the word "primarily" after the words "long-term care home is."

The Vice-Chair: Further debate?

Ms. Smith: Sorry, I wasn't finished.

Mrs. Witmer: Is that not government motion number 7?

Ms. Smith: It is.

The Vice-Chair: Keep going.

Ms. Smith: —by adding the word "primarily" after the words "long-term care home is" and by adding "and have their physical, psychological"—and here I'm adding the word "social." Sorry—"physical, psychological" and then I'm adding the word "social," "spiritual and cultural needs are adequately met." I'm adding the word "adequately" after—sorry, "needs are adequately" and after "comfort."

The Vice-Chair: Do you mind reading it again, all together?

Ms. Smith: I move that section 1 of the bill be amended by adding the word "primarily" after the words "long-term care home is" and by adding "and have their physical, psychological, social, spiritual and cultural needs adequately met" after "comfort."

The Vice-Chair: Thank you. Is there any further debate?

Mrs. Witmer: If we're going to make an amendment here, I do believe we have to add "and is to be operated and funded." There is no reference made in section 1 of the bill whatsoever to funding, so I could not accept this change without a recognition of the fact that it's not just operation but also, in order for this to happen, there is going to have to be government funding provided.

The Vice-Chair: Any further debate on the amendment submitted by Ms. Smith to the NDP amendment number 2? No. I put that amendment for a vote. All in favour? Those opposed? That carried.

Now I want to deal with the second NDP amendment submitted by Ms. Martel, as amended. All in favour? Opposed? Carried.

The third motion is from the Conservatives.

0940

Mrs. Witmer: I move that section 1 of the bill be amended by adding "and receive nursing and personal care to address their needs" at the end.

At this point in time, there is no recognition for the need to provide any nursing and personal care, and I think we want to ensure that we indeed provide what is expected to our residents. Also, if we take a look at this bill and we take a look at the extensive detailed obligations and reporting requirements, we know that staff are going to have to spend much more time on compliance and documentation rather than resident care and services. It's simply not possible to even provide the same level of care as is currently provided, which we know is not sufficient. So unless we put in here some sort of a recognition of the need for the nursing and personal care to address their needs, my concern is that the level of time committed to care and nursing will further decline if there's no additional government funding. I don't want to reduce the quality of care presently being provided.

The Vice-Chair: Further debate?

Ms. Martel: I agree with Mrs. Witmer and have moved an exactly similar motion on the next page. So I agree with what she said, that we should be amending section 1 as per this change.

Ms. Smith: I don't agree that we need to add this. I think it's redundant given that we've just added that we will be meeting their physical, psychological, spiritual, cultural and social needs, and I feel that that's more inclusive. I think that this legislation actually is focusing in on the residents' needs and making sure that those needs are met, so I don't think that Conservative motion 3 is necessary. We'll be voting against it.

The Vice-Chair: Any further debate? We'll put the motion to a vote. All in favour of PC motion 3? Opposed? It's lost.

We'll move to the fourth motion, by the NDP.

Ms. Martel: Mr. Chair, in light of the last vote on an exactly similar motion, I'll withdraw this amendment.

The Vice-Chair: Ms. Martel withdraws motion 4.

We'll move to motion 5, also by Ms. Martel.

Ms. Martel: I move that section 1 of the bill be amended by adding "and is also a workplace, which is operated with due regard to the health and safety of staff of the home" at the end.

I appreciate that the fundamental principle really needs to focus on those residents of long-term-care homes in the province of Ontario, but I also think it is incumbent upon all of us to recognize that while it is a home, it is also a workplace, and many people who are providing work in that workplace to try and meet residents' needs have to have their health and safety needs met. We heard from workers during the course of the public hearings about inappropriate or violent behaviour of residents that led to them being bitten, slapped, spit on and in some cases seriously hurt, so that they could no longer return to their regular work. I think that in the fundamental principle, we need to be also guaranteeing that workers who are providing excellent care to the residents whom we're trying to support are able to do so under circumstances that look out for their well-being as well. Otherwise, they're not going to be in much of a position to provide adequate care, good care, quality care to the residents. This was submitted by the Ontario Nurses' Association.

The Vice-Chair: Any further debate?

Ms. Smith: We believe that by amending the fundamental principle to include the word "primarily," we are acknowledging that it is not just the home of the residents but other things, including a workplace. We acknowledge that those workers are entitled to protection under the Occupational Health and Safety Act. We don't want to dilute from that, so we'll be opposing this motion. We feel that through this legislation, we're providing training. We have invested in lifts. We certainly do recognize the need for a safe work environment for our workers, and we will continue to do so.

The Vice-Chair: Any further debate?

Ms. Martel: One final point: I don't see how adding this particular provision would in any way dilute from the Occupational Health and Safety Act. But I'll leave it at that.

The Vice-Chair: Any further debate? Now we'll put NDP motion 5 to a vote. All in favour? Opposed? It's lost.

We'll move to PC motion 6.

Mrs. Witmer: I move that section 1 of the bill be struck out and the following substituted:

"Fundamental principle

"1. The fundamental principle to be applied in the interpretation of this act and anything required or permitted under this act is that a long-term care home is the home of its residents and is to be operated and funded so that the medical, nursing, personal support, dietary, recreational, social, restorative, religious and spiritual needs of each of its residents are adequately met and that the home is a place where they may live with dignity, and in security, safety and comfort."

I spoke to this before because we've since amended the fundamental principle, but I am concerned that the fundamental principle no longer recognizes the long-term-care home as a health service provider funded to provide care to residents—and it is absolutely essential that there be government funding—in addition to, as we already are saying, it being the home for residents. Obviously, these individuals are admitted based on their assessed needs, and currently, if we take a look, even with the amendment that we've made, there really doesn't appear to be any requirement for funding to meet the care needs of the residents, so I do believe it's important that that be there.

The Vice-Chair: Any further debate?

Ms. Smith: I don't know that it's appropriate to be including funding motions in the legislation.

Interjection.

The Vice-Chair: It's a principle to be applied, not direct funding. Any further debate?

Ms. Smith: We'll be opposing this motion.

The Vice-Chair: Any further debate? I'll put PC motion 6 to a vote. All in favour? Opposed? The motion is lost.

We'll move to government motion 7.

Ms. Smith: I withdraw this motion.

The Vice-Chair: Motion withdrawn.

Any debate on section 1, as amended? No? Shall section 1, as amended, carry? Carried.

Now we'll move to NDP motion 8.

Ms. Martel: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'abuse,' with respect to a resident, means any action or inaction, misuse of power or betrayal of trust or respect by a person against the resident, that the person knew or ought to have known would cause, or could reasonably be expected to cause, harm to the resident's health, safety or well-being, and includes, without being limited to, physical abuse, sexual abuse, sexual assault, emotional abuse, verbal abuse, financial abuse, exploitation of person or property, neglect, prohibited use of restraints, and improper discipline, and can be either a single act or repeated acts, and can be a lack of appropriate action;"

This particular amendment was given to us by the Advocacy Centre for the Elderly. It is a broader definition of abuse, and I think it is appropriate to be sure that we are recognizing all forms of abuse that a resident might face.

The Vice-Chair: Ms. Martel, just a clarifying question: Was this definition for abuse to replace the definition or just to clarify it?

Ms. Martel: I wanted it to replace. I'm sorry; I probably didn't make that clear to legislative counsel.

The Vice-Chair: There already was a definition. Do you want it repeated? Okay. Further debate?

Ms. Smith: It's our position that it's not appropriate to put this type of definition in the legislation itself as the notion of abuse could change over time and we would like the ability to reflect those changes or any new determination of what may fall under the definition of abuse. I would also note that in clause 178(2)(a), the act allows for regulation-making authority to define "physical, sexual, emotional, verbal and financial abuse for the purposes of the definition of 'abuse' in subsection 2(1)." We would hope to have some public consultation on the definition of abuse and ensure that we have a proper working definition that could be modified, if need be, in the future. That's why we would put it in the regulations. So we'll be voting against this amendment.

0950

The Vice-Chair: Any further debate? I'll put NDP motion number 8 to a vote. All in favour? Opposed? Lost.

Government motion number 9: Ms. Smith.

Ms. Smith: I move that subsection 2(1) of the bill be amended by adding the following definitions:

"'care' includes treatment and interventions; ('soins')

"'incapable' means unable to understand the information that is relevant to making a decision concerning the subject matter or unable to appreciate the reasonably foreseeable consequences of a decision or a lack of decision; ('incapable')

"'intervention' means an action, procedure or activity designed to achieve an outcome to a condition or a diagnosis; ('intervention')

"'volunteer' means a person who is part of the organized volunteer program of the long-term care home under section 15 and who does not receive a wage or salary for the services or work provided for that program. ('bénévole')"

The Vice-Chair: Any further debate? If there's no debate, I will put government motion number 9 to a vote. All in favour? Opposed? None? Carried.

We move to NDP motion number 10.

Ms. Martel: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'neglect' means the failure to provide the care and assistance required for the health, safety or well-being of a resident, and includes a pattern of inaction that jeopardizes the health or safety of one or more residents, and includes, without being limited to, the failure to,

"(a) provide the ongoing care set out in a resident's plan of care,

"(b) provide access to a physician's services, when required,

"(c) reduce and manage health and safety hazards in the facility on an ongoing basis,

"(d) implement programs to identify and mitigate risks, so as to prevent and minimize health-care problems in the facility, including, but not limited to, pressure ulcers, dehydration and unplanned weight loss,

"(e) summon or provide assistance, when required,

"(f) respond to a resident's request for assistance, or

"(g) report witnessed or suspected abuse;"

Right now, in the definition section, there is no definition listed for "neglect." I think the proposal I've put forward is very broad because, as I argued earlier with "abuse," we should be recognizing all forms and all types of both potential abuse and potential neglect. I think the amendment that I have put forward does that in terms of anything a resident might face in terms of not getting the care he or she needs in a long-term-care home. This proposal was put forward to us by OANHSS.

The Vice-Chair: Any further debate?

Ms. Smith: I appreciate that Ms. Martel's definition is extensive. We do have in clause 178(2)(c) a regulation-making power to define "neglect" for the purposes of any provision of the act. I think that consultation would be appropriate in this case to ensure that we have a broad definition as well to ensure that we have the ability to amend a regulation in the future, should there be something that is unforeseen that we note should be included in the definition of "neglect."

Mrs. Witmer: I would support the government in the need to put this in and provide flexibility. I believe it belongs in regulation—and it does require consultation.

The Vice-Chair: Any further debate? If none, then I put NDP motion number 10 to a vote. All in favour? Opposed? Lost.

NDP motion number 11: Ms. Martel.

Ms. Martel: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'nursing' means care and service provided by a registered nurse or by a registered practical nurse or registered nurse in the extended class;"

This proposal was put forward to us by OANHSS.

The Vice-Chair: Any further debate?

Ms. Smith: I note that in government motion 268 we define "nursing care" for the purposes of section 93. As well, it's inappropriate to put in the definition of "nursing" when the college determines through the Regulated Health Professions Act what nursing is for every different class. We do, in the definition section, acknowledge the different types of nursing. So I'll be voting against this motion. We think it's adequately dealt with in the legislation.

The Vice-Chair: Any further debate? None? All in favour of NDP motion number 11? Opposed? It's lost.

We move to motion number 12.

Ms. Martel: I'm going to be withdrawing this, because there is a definition later on in the restraints section that the parliamentary assistant pointed out to me, so I will agree with her and withdraw it at this time.

The Vice-Chair: We will move to NDP motion number 13.

Ms. Martel: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'restorative care' means an interdisciplinary approach to care provision which is designed to assist the resident to maximize his or her remaining strengths and abilities in order to attain or maintain the maximum level of functioning that is possible, or that is desired by the resident, or both;"

Again, there isn't a definition of "restorative care" in the definitions section. I think there should be, and I think this makes it clear that restorative care also means the broadest possible ability of ensuring that the resident maximizes the functions that they have, maximizes the ability that they have. This amendment was proposed to us by OANHSS.

The Vice-Chair: Is there any further debate?

Ms. Smith: We will be dealing with the notion of restorative care in motions 26 and 67 that the government has put forward. As well, I take some exception to talking about the "remaining" strengths and abilities. We want to maximize "the" strengths and abilities, not what remains. So we will be dealing with this in our government motions, and I think our definition of "restorative care" set out in motion 67, which will amend subsection 8(1), is broader and more inclusive.

The Vice-Chair: Any further debate? None? All in favour of NDP motion number 13? Opposed? The motion is lost.

We move to PC motion number 14.

Mrs. Witmer: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'volunteer' means a person who offers service of his or her own free will without an expectation of gain, which service could be direct or indirect service to residents, but does not include family or others who are visiting or providing one-on-one care only to the person's family member or personal friend who is a resident in the home;"

Certainly when OANHSS appeared before us, they did believe that without this definition, family members may be included and thus subject to criminal reference checks and other extraordinary provisions. So this definition was supported.

The Vice-Chair: Any further debate?

Ms. Smith: In government motion number 9, we included a revised definition of "volunteer" which delineated volunteers as being those who are part of an organized volunteer program pursuant to section 15 and who do not receive a wage or salary for the services or work provided for in the program, which we think is a clearer definition. It's cleaner. It's those who are part of a volunteer program. So we think this motion is unnecessary.

Ms. Martel: I'd just point out, because I have a similar motion to Mrs. Witmer's, that I'm not clear what an "organized volunteer program" is. I don't know what that's going to be defined to be, and I think that's quite

limiting in terms of having people come into the home to aid or assist the home in a number of ways in the provision of care. I think the definition that both Mrs. Witmer and I put forward gives more flexibility to the home to allow people in and to allow people who are not direct family members to do things. I think the motion that has been put forward now is broader and actually will serve us better.

The Vice-Chair: Any further debate? None? All in favour of PC motion number 14? Opposed? The motion is lost.

We move to motion number 15 by the NDP.

Ms. Martel: This motion is similar to the one that was just put by Mrs. Witmer, and given that the government voted it down, I will withdraw it.

The Vice-Chair: Ms. Martel has withdrawn motion number 15.

We move to motion number 16 by the government.

Ms. Smith: I move that the definition of "secure unit" in subsection 2(1) of the bill be struck out and the following substituted:

"'secure unit' means an area within a long-term care home that is designated as a secure unit by or in accordance with the regulations; ('unite de sécurité')"

1000

The Vice-Chair: Any further debate? All in favour of government motion number 16? Opposed? None. Carried.

We move to motion number 17 by the NDP.

Ms. Martel: I have a different definition for "secure unit."

I move that the definition of "secure unit" in subsection 2(1) of the bill be struck out and the following substituted:

"'secure unit' means a part of the long-term care home where residents,

"(a) are protected from leaving due to risks associated with their diagnosis or behaviours, or both, and

"(b) are supported to achieve the highest level of functioning, freedom and choices possible through living in an enabling environment;"

This definition was proposed by OANHSS.

The Vice-Chair: Any further debate?

Ms. Smith: I believe that this definition is more indicative of a specialized unit, and we refer to those in 43(1) and 30(4), (5) and (6). Our definition of "secure unit" that we just passed is more appropriate for what we're dealing with in the legislation.

The Vice-Chair: Any further debate? None? Now we'll put NDP motion number 17 to a vote. All in favour? Opposed? It's lost.

We move to NDP motion 18.

Ms. Martel: I move that the definition of "spouse" in subsection 2(1) of the bill be amended by adding "including a same-sex relationship" at the end.

This was proposed to us by OANHSS.

The Vice-Chair: Any further debate?

Ms. Smith: I believe it would be inappropriate to make the amendment that has been suggested, as the definition as it's set out in our legislation is the definition that is now used in all Ontario statutes, and to differentiate would put into question the other Ontario statutes that now include this definition of "spouse."

The Vice-Chair: Any further debate? None? All in favour of NDP motion number 18? Opposed? The motion is lost.

We will now move to government motion number 19.

Ms. Smith: I move that subsection 2(2) of the bill be struck out and the following substituted:

"Controlling interest

"(2) Without limiting the meaning of controlling interest, a person shall be deemed to have a controlling interest in a licensee if the person, either alone or with one or more associates, directly or indirectly,

"(a) owns or controls, beneficially or otherwise, with respect to a licensee that is a corporation,

"(i) 10 per cent or more of the issued and outstanding equity shares, and

"(ii) voting rights sufficient, if exercised, to direct the management and policies of the licensee; or

"(b) has the direct or indirect right or ability, beneficially or otherwise, to direct the management and policies of a licensee that is not a corporation.

"Same

"(2.1) Without restricting the generality of subsection (2), a person shall be deemed to have a controlling interest in a licensee if that person, either alone or with one or more associates, has a controlling interest in a person who has a controlling interest in a licensee, and so on."

The Chair (Mr. Ernie Parsons): Discussion?

Ms. Smith: This will enable us to address some issues that have been raised around who has actual control of an entity that has control over a long-term-care home.

The Chair: Any other discussion? We'll call the vote. Those in favour? Opposed? It is carried.

We move next to PC motion number 20.

Mrs. Witmer: I move that section 2 of the bill be amended by adding the following subsection:

"'Staff'

"(5) The definition of the term 'staff' in subsection (1) does not change the contractual relationship between the licensee and an independent contractor or impact requirements concerning income tax, workplace safety and insurance, or employer health tax."

The Chair: Do you wish to speak to this?

Mrs. Witmer: Yes. It speaks to the need to ensure that "staff," in relation to a long-term-care home, means persons who work at the home as employees of the licensee pursuant to a contract or agreement with the licensee, or pursuant to a contract or agreement between the licensee and an employment agency or other third party.

The Chair: Any other discussion?

Ms. Smith: I would just note that in motion 326 we have the regulatory power to exempt certain classes of staff from certain regulations. This will give us more

flexibility and allow us to in any way address any concerns that are raised through income tax rulings or others.

The Chair: Any other discussion? I would ask for those in favour. Opposed? The motion is lost.

Government motion number 21. Parliamentary assistant.

Ms. Smith: Thank you. Welcome, Chair. Happy to have you here.

The Chair: I left Belleville at 6 o'clock.

Ms. Smith: I move that section 2 of the bill be amended by adding the following subsection:

"Meaning of 'explain'

"(5) A rights adviser or other person whom this act requires to explain a matter directly to a resident or an applicant for admission to a long-term care home satisfies that requirement by explaining the matter to the best of his or her ability and in a manner that addresses the special needs of the person receiving the explanation, whether that person understands it or not."

The Chair: Do you wish to speak to the motion?

Ms. Smith: Adding this definition clarifies the role of the rights adviser.

The Chair: Any other discussion? Those in favour? Opposed? The motion is carried.

That concludes section 2, so I will now ask the question. Shall section 2, as amended, carry? In favour? Opposed? Carried.

That moves us to PC motion number 22.

Mrs. Witmer: I move that the portion of subsection 3(1) of the bill before clause (a) be amended by adding, "subject to the safety requirements and rights of all residents" at the end.

Again, this was an issue that was drawn to our attention by OANHSS. They indicated that there are situations where homes are faced with situations in which a resident or a family member insists on a right that may infringe on or violate the rights of others as described in part one of this submission. For example, the bill of rights has been interpreted to mean that a resident family member has the right to visit in the location of choice in the long-term-care home regardless of the risk it may present to others. Therefore, I do agree it is important for all residents and all family members to know that they do have an obligation. With rights go responsibilities and obligations, and they have a responsibility to contribute to a safe, respectful environment for everyone who is living in the long-term-care home. It is important that, throughout this act, we balance the rights of individuals with the need to also protect other people.

The Chair: Any other discussion? Parliamentary assistant.

Ms. Smith: We know that it's important to protect the concept that the bill of rights is about the individual residents. We do recognize that there were concerns raised, and through government motion 357 we will be addressing that by including a provision in the preamble to address mutual respect. I did raise that with a couple of the presenters who did raise the concern, and they felt that would give them some ability to address the concerns they have raised.

Ms. Martel: Chair, can I ask a question on this? I have a similar motion to Mrs. Witmer's that comes under number 37, which says very clearly that the bill of rights is to be interpreted with a similar principle that she's outlining.

I guess I'm just not clear why we would be putting that in the preamble rather than in the section that directly speaks to rights and residents' rights, so if I could just get some clarification from the parliamentary assistant.

Ms. Smith: Sure. The bill of rights—we will amend it, but the general bill of rights has existed since 1993, and it's important that we ensure that the individual rights of residents are protected. By starting to include notions of collective rights within the bill of rights, it impacts on the ability of an individual to assert their right under the bill of rights, so we feel that mutual respect in the preamble allows for the homes to have something to turn to, should they need to address a concern around a collective right versus bill of rights situation in a home.

Ms. Martel: Can I ask one question, just because I'm trying to flip through to find yours. In the change that you propose to the preamble, does it speak very directly to the residents' bill of rights then, that the collective has to be balanced against the individual? I just want to give you the number, Monique. I can try to flip to it.

Ms. Smith: It's 357.

1010

Ms. Martel: Thanks.

Ms. Smith: Just for clarity, we will be proposing "strongly support collaboration and mutual respect amongst residents, their families and friends." We address the issue by addressing not only the residents but their family and friends, which I think goes some way to addressing the concern that has been raised about individual versus collective rights.

Ms. Martel: Could I just say one other thing? Perhaps in that context, then, the parliamentary assistant might consider something beyond collaboration that speaks to either safety in that particular amendment of 357—because I see collaboration and mutual respect as a little bit different from ensuring someone's safety or the safety of the collective.

Ms. Smith: We'll leave that till 357.

Ms. Martel: Sure, thanks.

Mrs. Witmer: Yes, I would certainly agree. I am obviously pleased to see the change in the preamble, but the reality is, I don't think that that preamble, which I'm just looking at now, adequately addresses the concerns that have been brought to our attention that sometimes homes are faced with situations in which the individual or the family is going to insist on a right simply because we have here a resident bill of rights. Yet, in doing so, their insistence will mean that it could violate the right or safety of other individuals. So I would hope, if the government is going to reject this motion, which it appears they will, that they more adequately address this concern in 357.

The Chair: No other discussion? Those in favour of the motion? Opposed? It is lost.

PC motion 23.

Mrs. Witmer: I'm going to withdraw that at this time since we are going to be dealing with that.

The Chair: That brings us to government motion 24. Parliamentary assistant.

Ms. Smith: I move that subparagraph 11 ii of subsection 3(1) of the bill be amended by striking out "treatment or care" and substituting "treatment, care or services."

The Chair: Does anybody wish to speak to it? Those in favour? Opposed? Carried.

Moving us to PC motion 25. Mrs. Witmer.

Mrs. Witmer: I move that paragraph 12 of subsection 3(1) of the bill be struck out and the following substituted:

"12. Every resident has the right to receive care and assistance towards independence based on a restorative care philosophy to maximize independence to the greatest extent possible."

I think the issue here is the introduction of the undefined term "restorative care services." What does it mean? If we take a look at the way in which resident right number 12 is stated, it presupposes the existence of a divine set of restorative care services to which a resident has a right. This right sets up an entitlement to a core of restorative care services which are currently not defined, nor are they funded, nor are they provided in long-term-care homes. It is rather disingenuous of the government to introduce new program elements through resident entitlements without some funding, which is not being provided. It certainly could lead to some disappointment.

The Chair: Any discussion? Ms. Smith.

Ms. Smith: We're all getting along so well. I just point out that motion 67 deals with addressing some of Ms. Witmer's concerns around the definition of "restorative care." Her motion 25 is quite similar to our 26, so we'd be willing to live with hers.

The Chair: Any other discussion? I'm going to call the vote. Those in favour? That's carried.

Ms. Smith: Chair, I withdraw motion 26.

The Chair: Okay. NDP motion number 27.

Ms. Martel: I move that paragraph 13 of subsection 3(1) of the bill be struck out and the following substituted:

"13. Every resident has the right not to be restrained, by either physical or chemical restraints, except in the limited circumstances provided for under this act and subject to the requirements provided for under this act."

We heard some concerns about the use of chemical restraints in terms of medication and potential over-medication of residents and that it should also be a right to not find oneself in this position. This was proposed to us specifically by SEIU. There were others who talked about physical and chemical restraints as well.

The Chair: Other discussion?

Ms. Smith: Actually, it's not broad enough because it doesn't include environmental restraints, and we think that chemical restraints are dealt with in sections 34 and 28(4) and 87(2) and 27. So we would be opposing this amendment.

The Chair: Any other discussion? I'll call the vote. Those in favour? Opposed? The motion is lost.

PC motion number 28.

Mrs. Witmer: I move that paragraph 14 of subsection 3(1) of the bill be struck out and the following substituted:

"14. Subject to the safety of the resident and the rights and safety of other residents, every resident has the right to communicate in confidence, receive visitors of his or her choice and consult in private with any person without interference."

Again, this was a concern that was raised by OANHSS. They pointed out to us that long-term-care homes do have the dual responsibility to respect and promote individual rights but at the same time protect the safety of the entire long-term-care community. So that potentially does create some conflicting obligations, and these obligations could create a little bit of hardship for the home. A resident could be abused behind closed doors and the home held responsible even though the home could not restrict visitors it suspects of abusing a resident from meeting with that resident in private if the resident allows those persons to visit. So at the same time section 17 places a duty to "protect residents from abuse by anyone." They were looking for some definition that would protect the homes in this type of a situation.

The Chair: Parliamentary assistant.

Ms. Smith: We do believe that the duty to protect under section 17 does go far enough to protect them. As well, we've got in our motion 357 the mutual respect provision in the preamble that we will be bringing forward. I have heard your concerns around safety and we will try to address that as well.

I would note, though, that in the discussions at the homes that we've had, they usually try to resolve these issues on a case-by-case basis. While we have heard that they want some recognition of mutual respect or living together, I don't think it's appropriate to put it in this section.

The Chair: Shall I call the vote? Those in favour of the motion? Opposed? The motion is lost.

PC motion 29.

Mrs. Witmer: I move that paragraph 15 of subsection 3(1) of the bill be amended by adding "unless this is impossible because of the restrictions resulting from the outbreak of an infectious disease" at the end.

This was an argument put forward by some of the long-term-care homes and the association. It is the duty of the local medical officer of health to declare an outbreak and to provide directives regarding required infection control measures. During an outbreak, restrictions are commonly placed on visiting as part of the infection control measures and these restrictions obviously vary by public health unit.

The Chair: Parliamentary assistant.

Ms. Smith: We appreciate your raising this concern. We've discussed it with the medical officer of health and the infectious disease branch at public health, and they advise us that visitation restrictions of the medical officer of health during outbreaks are flexible and compassionate, as is reflected in the provincial guideline A Guide to the Control of Respiratory Infection Outbreaks in Long-Term Care Homes, October 2004. They don't recommend complete closure of visitation as it may cause emotional hardship to residents and relatives. So there is some flexibility to allow for visitation during an outbreak. I think that providing this in the legislation is actually heavy-handed and that we should allow for the medical officer of health to make their determinations in their guidelines.

1020

The Chair: Shall I call the vote? Those in favour of the motion? Opposed? The motion is lost.

Motion 30. Ms. Witmer?

Mrs. Witmer: Again, this probably will be lost, but I move that paragraph 26 of subsection 3(1) of the bill be amended by adding "unless the physical setting makes this impossible" at the end.

Ms. Smith: Oh, so defeatist, Ms. Witmer. Actually, it's the same as our recommendation, motion 31, so we support you in this.

Mrs. Witmer: You know what? You're right.

Ms. Smith: There you go. Happy day.

The Chair: That's a great line to use, you know.

Mrs. Witmer: I know.

The Chair: Okay. There's no further debate. I will call the vote. Those in favour of the motion? Those opposed? It is carried.

Government motion 31.

Ms. Smith: Since Ms. Witmer did such a fabulous job on motion 30, we will be withdrawing 31.

The Chair: We're on a roll. Government motion 32.

Ms. Smith: I move that subsection 3(1) of the bill be amended by adding the following paragraph:

"27. Every resident has the right to have any friend, family member, or other person of importance to the resident attend any meeting with the licensee or the staff of the home."

The Chair: Do you wish to speak to it?

Ms. Smith: Sure. We did hear some concern from some advocate groups that residents were feeling that they wanted the support of a friend or a family member or some kind of adviser when they were meeting with the home, so we thought that it was important to include that right in this legislation.

The Chair: Any other debate? I will call the vote. Those in favour of the motion? Opposed? It is carried.

That brings us to PC motion 33. Ms. Witmer.

Mrs. Witmer: Do you think the government's going to agree with us on this one?

Ms. Martel: I have a similar motion.

Mrs. Witmer: I know. Anyway, religious freedom. I move that section 3 of the bill be amended by adding the following subsection:

"Religious freedom

"(2.1) Nothing in the residents' bill of rights shall unjustifiably, as determined under section 1 of the Canadian Charter of Rights and Freedoms, require a licensee that is a religious organization or sponsored by a religious organization to provide a service that is contrary to the religious teachings of the organization."

This wording, by the way, is actually similar to the provisions in sections 26 and 28 of the Local Health System Integration Act. I think we need to remember that there are many people in the province of Ontario who are drawn to faith-based homes precisely because of their religious character, so I think it is important that we include in here this subsection to protect the religious freedom of faith-based homes.

Ms. Martel: I'm in support of Ms. Witmer because I have a similar motion next in motion 34. It was a while ago that I dealt with Bill 36, but my recollection is that the addition of those particular amendments were essentially to protect Catholic-based hospitals. That point had been made clear to us during presentations during the course of public hearings, so we did accept amendments at that time that would protect the integrity or the religious background/religious history of particularly Catholic hospitals, whether they had been started in many cases by orders of sisters, etc. I'm not sure why, if we did it with respect to hospitals, we wouldn't be doing exactly the same thing with respect to long-term-care homes.

Ms. Smith: We'll be opposing this amendment. It would provide the licensee with an unusual constitutional protection which is ordinarily only afforded to individuals. While I recognize that it was discussed with respect to Bill 36—that's a different entity—the hospitals had far different concerns than long-term-care homes have with respect to their religious rights. These protections would override the individual rights and, in fact, the resident would have to try and commence an action against a home in order to enforce them. So we'll be opposing this, as we feel it's not necessary in the context of long-term-care homes.

As well, I would note that we only heard from one presenter on this, a law firm, which made it clear that they didn't represent any particular home at the hearing. In fact, I believe only one stakeholder even made reference to it. While we did hear from a number of religious-based homes, most of them did not raise it.

The Chair: If there's no other discussion, I will call the vote. Those in favour of the amendment? Opposed? It is lost.

Bringing us to NDP motion 34, Ms. Martel.

Ms. Martel: This motion is the same as the one that had been presented by Ms. Witmer and was voted down by the government, so I will withdraw it.

The Chair: PC motion 35, Ms. Witmer.

Mrs. Witmer: I move that subsection 3(3) of the bill be struck out and the following substituted:

"Enforcement by resident

"(3) A resident may enforce the residents' bill of rights against the licensee and the crown as though the resident and the licensee and the crown had entered into a contract under which the licensee and the crown had agreed to fully respect and promote to the best of their abilities all of the rights set out in the residents' bill of rights."

I think in a case where you have mutual responsibilities in a publicly funded program such as long-term care, where all of the revenues are determined by the government, it is not appropriate to have the bill of rights enforceable against only the licensee. There is a need to also include the crown—in this case, that would be the ministry—whose funding and whose legislation we're debating here and who puts in place the regulations and policies that clearly affect the operator's ability to meet rights. So that's why I have substituted the current wording.

Ms. Smith: The bill of rights exists in the home and it is the provider that is providing services to the resident, not the crown, so it would be inappropriate to introduce the crown into this section.

The Chair: I'm going to call the vote. Those in favour? Opposed? The motion is lost.

NDP motion 36. Ms. Martel.

Ms. Martel: I move that section 3 of the bill be amended by adding the following subsection:

"Enforcement by others

"(3.1) If a resident is not capable of enforcing his or her rights under subsection (3), a family member or substitute decision-maker of the resident may do so on the resident's behalf."

This was part of the brief that was given to us by the Registered Nurses' Association of Ontario. We think it speaks to the need to ensure that while there is a bill of rights, if for some reason you are incapable of enforcing it and it needs to be enforced, then your substitute decision-maker or family member can do so on your behalf when the resident is not capable of doing that themselves.

Ms. Smith: It is the residents' bill of rights. I believe that if a resident is incapable, their substitute decision-maker would already be in the place of the resident and could enforce them. It would be inappropriate for a family member who wasn't a substitute decision-maker to have the right to enforce it, because it is a residents' bill of rights. So I'll be opposing this amendment.

Ms. Martel: A quick question: If I took out "family member," would you agree to it?

Ms. Smith: I believe it would be redundant because a substitute decision-maker would already stand in the place of a resident if they were found to be incapable.

Ms. Martel: Just for clarification on that, where is that guarantee provided? Is it provided as a result of someone becoming a substitute decision-maker?

Ms. Smith: Under the Substitute Decisions Act, yes, the substitute decision-maker would stand in the place of a resident if they were found to be incapable. That's the rule.

Ms. Martel: So from your perspective, there is not a requirement to make sure that's clear with respect to these particular sets of rights.

Ms. Smith: My legal counsel is saying no.

1030

The Chair: I will call the vote. Those in favour of the motion? Opposed? It's lost.

NDP motion 37. Ms. Martel.

Ms. Martel: I move that section 3 of the bill be amended by adding the following subsection:

"Rights of others"—Chair, this is similar to the motion that was moved by Ms. Witmer earlier on. We've had a bit of a discussion about this, and I'm trusting that the parliamentary assistant and the legal staff and others are going to have another look at motion 357 to see what else can be added in addition to support, collaboration and mutual respect that will speak to the issue about safety. So, based on that discussion in an earlier conversation, I will withdraw this.

The Chair: Okay. PC motion 38?

Mrs. Witmer: Ours is very similar to the NDP motion just discussed and, again, we have discussed this with the government. I also hope that they will take into consideration the need for individual rights not to impinge on the rights and safety of other residents. I withdraw it.

The Chair: Okay. Thank you.

PC motion 39.

Mrs. Witmer: I move that section 3 of the bill be amended by adding the following subsection:

"Resident responsibilities

"(5) Every resident of a long-term care home has the following responsibilities:

"1. To collaborate with the care team of the home in developing and carrying out agreed-upon plans of care.

"2. To provide members of the care team with complete information about his or her health and communicate wants and needs as they arise.

"3. Make known his or her understanding of their plan of care.

"4. To express complaints or problems regarding his or her care to the care team.

"5. To recognize there are limits to what medicine and the health care system can realistically achieve.

"6. To be aware of the home's obligation to respect the individual rights of all residents.

"7. To show respect for other residents, their family members, volunteers and the staff of the home.

"8. To meet financial obligations.

"9. To abide by administrative and operational policies and procedures of the home."

I think it's important to note that several other jurisdictions, for example the United Kingdom and Scotland, have enshrined resident patient rights while at the same time also speaking to patient resident responsibilities. I think one of the things that is lacking in Bill 140 is, although it does focus on the residents' rights, it does not focus on the fact that with rights, whether you're in a

long-term-care home or anywhere else, you do have responsibilities. I think there is a need to recognize that there are limits to what health and medicine can realistically achieve, and I think it's important that people be made aware of the need for the balance between the rights and the responsibilities.

The Chair: Any discussion?

Ms. Smith: I have deep concerns about this amendment. This legislation is to regulate licensees, not our residents. It would remove residents' choice. Specifically with respect to some of the notions—not limiting my concerns to these, but I would highlight that carrying out an agreed plan of care would seem to indicate that no one could change their mind on what the plan of care could be; limiting the expression of complaints and problems to the care team would limit them from making complaints anywhere else; number 6 we have already dealt with on the collective versus individual rights; and we will be moving an amendment to deal with the bad debt question, which I think addresses some of the financial obligations.

I'm concerned that we would, in this case, be regulating residents, and that's not our intention with this legislation, so we'll be opposing this amendment.

Mrs. Witmer: I hope the government does make the appropriate changes. This whole issue of rights and responsibilities was brought to our attention by the Ontario Association of Residents' Councils when they, 25 years ago, had a publication called Residents' Rights and Responsibilities. They believe today, as they believed then, that rights also do involve responsibilities to others. The OMA did speak to this issue as well, and also the Ontario Long Term Care Association. So I hope that the government does make the appropriate changes.

Ms. Smith: While I have no doubt that the OLTCA would support these changes, I have serious concerns that the residents' councils would. While I recognize that they do recognize responsibilities, I don't think they'd be in agreement with this amendment.

Mrs. Witmer: I'm saying they wanted responsibilities addressed.

The Chair: I will call the vote. Those in favour of the motion? Opposed? The motion is lost.

We have now completed the amendments to section 3. Shall section 3, as amended, carry? Carried.

That brings us to PC motion number 40.

Mrs. Witmer: I move that subsection 4(1) of the bill be struck out and the following substituted:

"Mission statement

"(1) Every licensee shall ensure that there is a mission statement for each of the licensee's homes that is put into practice in the day-to-day operation of the long-term-care home."

The ministry has talked about moving into a stewardship role in the newly recognized Ministry of Health and Long-Term Care, but there doesn't seem to be any alignment with this philosophy. What we see within this act are sections that are certainly excessively prescriptive, process-oriented, and that in some cases could even be considered inappropriate.

I do believe there is a need for change. I do believe that homes should have a mission statement. However, how this is created I don't think should be in legislation, and we heard that from a lot of the long-term-care homes. Again, there is full support for the mission statements, because I do think you need to anchor the organizational direction, but I think the details as to how you actualize that should be left to the individual homes.

Ms. Smith: I would argue that our requirement that every home set out its principles, purpose and philosophy directly related to that home would better get to the notion of every home having a mission statement. The provision that Mrs. Witmer is providing will only allow corporate mission statements. I don't believe that Leisureworld North Bay is in any way related to Leisureworld O'Connor. I want their mission statement to reflect my home in North Bay.

I would note that if you go onto the website of some of our homes and you look under "mission statement," they'll direct you to their corporate head office mission statement, which I don't think in any way reflects the values necessarily or the aspirations of the residents of any particular home. So our government will be voting against this motion.

The Chair: Any other debate? I'll call the vote. Those in favour of the motion? Opposed? That is lost.

PC motion number 41.

Mrs. Witmer: I would withdraw that motion, given the response.

The Chair: Thank you. That brings us to NDP motion 42.

Ms. Martel: This amendment is the same as the one that was just withdrawn by Mrs. Witmer. I will withdraw it as well, given the government has already voted a similar amendment down.

The Chair: That brings us to government motion 43.

Ms. Smith: I move that subsections 4(3) and (4) of the bill be struck out and the following substituted:

"Collaboration

"(3) The licensee shall ensure that the mission statement is developed, and revised as necessary, in collaboration with the residents' council and the family council, if any, and shall invite the staff of the long-term care home and volunteers to participate.

"Updating

"(4) At least once every five years after a mission statement is developed, the licensee shall consult with the residents' council and the family council, if any, as to whether revisions are required, and shall invite the staff of the long-term care home and volunteers to participate."

The Chair: Do you wish to speak to it?

Ms. Smith: Yes. We did hear, as Mrs. Witmer alluded to earlier, the concern around being too prescriptive. We wanted to ensure that staff and volunteers were invited to participate but were not in any way required. As well, with respect to revisions, we wanted to just determine

whether revisions were required, as opposed to enforcing revisions every five years.

The Chair: Any other discussion? I'll call the vote. Those in favour? Opposed? That is carried.

PC motion 44.

1040

Mrs. Witmer: Based on what has just happened, I would withdraw that motion.

The Chair: Government motion—sorry. I will now ask the question, having completed section 4: Shall section 4, as amended, carry? Carried.

Government motion 45. No—

Interjection: Slow down, Ernie.

The Chair: My brain is still in Belleville—having a very good time, by the way.

Shall section 5 carry? Carried.

Now we go to government motion 45.

Ms. Smith: I move that subsection 6(1) of the bill be amended by adding "written" after "is a" in the portion before clause (a).

This is just an oversight. We always intended to have written plans of care, so we just wanted to make that perfectly clear in this legislation through this amendment.

The Chair: Any discussion on this? Those in favour? Opposed? It is carried, bringing us to NDP motion 46.

Ms. Martel: I move that subsection 6(1) of the bill be struck out and the following substituted:

"Plan of care

"(1) Every licensee of a long-term care home shall ensure that there is a written plan of care for each resident that sets out,

"(a) the resident's assessed needs, desires and strengths;

"(b) the goals and the expected results of the care and service strategies;

"(c) the roles and responsibilities of staff, others, the resident and his or her family in care and service provision and contributing to the goals and expected results;

"(d) how the team will monitor whether the expected results are or can be achieved and what, if any, other level of health care organization might be more appropriate to meet the resident's health care needs and provide the required care."

This was submitted to us by OANHSS. I think it's a broader and, frankly, more appropriate provision with respect to what should be included in the plan of care. It focuses on things that are important in terms of the roles and responsibilities of others to support that plan of care. I think it is important, if it is at all necessary and another health care institution or facility might be better able to provide for the needs, that that be dealt with, so I think this is a stronger provision with respect to what we expect to go into a written plan of care.

Ms. Smith: We have, through our previous amendment, included "written." We feel that including the resident's desires is a bit difficult. And with respect to (c) and (d), while we have been accused of being very prescriptive in this legislation, I would say that (c) and (d) are incredibly prescriptive. Trying to set out the roles and responsibilities of staff, the resident, and his or her family in service provision is incredibly onerous and prescriptive. I would question whether my going in and, I don't know, doing something special for my mom would in some way violate a plan of care if it wasn't listed there as being my role as a family member. As well, with respect to (d), it is again overly prescriptive and I have concerns about determining other levels of health care organizations that might be more appropriate in a plan of care. It seems to be a way of trying to discharge residents.

Ms. Martel: I don't see it as a way to discharge residents. If there are very specific concerns that the home can't meet the care needs, then I hope the home and others who are involved in the care of that resident can recognize that and can respond to that in the best interests of the resident himself or herself.

With respect to whether or not this is prescriptive, I would point out that it was proposed to us by OANHSS, so it wasn't something that I dreamed up all on my own. I think that, as I said, it's much broader in terms of outlining what are those things we expect homes to put into a plan of care on behalf of each and every one of their residents.

The Chair: Seeing no other hands, I will call the vote. Those in favour of the motion? Those opposed? The motion is lost.

Government motion 47.

Ms. Smith: I'm looking at this in the context of Mrs. Witmer's motion number 48, which I think is very similar.

I move that clause 6(1)(c) of the bill be amended by striking out "as to how and when to provide the care" at the end.

The Chair: Any clarification?

Ms. Smith: While we did hear that there was concern around the onerous nature of some provisions in the legislation, we felt that it was best left to give clear direction, and as to how and when is determined by the care team.

Mrs. Witmer: This is very similar to my motion 48, and I'll be supporting this.

The Chair: No further discussion? Those in favour of the motion? Opposed? It is carried.

You are withdrawing PC motion 48?

Mrs. Witmer: I'm going to be withdrawing that, since we've just passed that.

The Chair: That brings us to government motion 49.

Ms. Smith: I move that subsection 6(2) of the bill be struck out.

I move this because we've defined "care" in the definitions section through a previous motion.

The Chair: Any discussion? Those in favour? Opposed? Carried.

Government motion 50.

Ms. Smith: I move that subsection 6(4) of the bill be amended by striking out "personal support, dietary" and substituting "personal support, nutritional, dietary."

The Chair: Do you wish to speak to it?

Ms. Smith: Yes. We were advised by the registered dietitians that the scope should include "nutritional" and "dietary."

The Chair: Any discussion? Those in favour? Opposed? Carried.

PC motion 51.

Mrs. Witmer: I move that subsection 6(6) of the bill be struck out.

Again, this subsection speaks to who should be given the opportunity to participate fully in the development and implementation of the resident's plan of care, and again, this does create some confusion, given that subsection 6(6) appears to override the hierarchy of decision-making as set out currently in the Health Care Consent Act. If it is the intent of subsection (6) to recognize the reality of the involvement of family members and other persons designated by the resident in care, this probably should be stated in policy, as opposed to law.

Ms. Smith: I find it shocking that Mrs. Witmer would be suggesting that we be developing a plan of care for a resident that didn't include the resident or give persons designated by the resident's substitute decision-maker an opportunity to participate in developing the plan of care. What we're trying to do through this legislation is make sure that the plan of care is resident-focused, and we're trying to ensure that our homes are the home of the resident. I can't imagine that we wouldn't want those loved ones or the substitute decision-maker or the resident themselves involved in the development of their initial plan of care. It shocks me, quite frankly, that we would be suggesting that we take out this kind of collaboration.

Mrs. Witmer: If you take a look at the Health Care Consent Act, the reality is that it already ensures that a resident may appoint a substitute decision-maker who must follow the resident's expressed care wishes. So this in no way is going to eliminate anybody's involvement, and that is certainly not the intent. But there is some confusion that has been introduced here, and we're simply looking to eliminate that confusion.

Ms. Smith: I don't think there's any confusion. In fact, in certain circumstances where a substitute decision-maker may not be readily available, it is appropriate that another person designated by the resident or the substitute decision-maker be given the opportunity to participate. In a case where, for some reason that I can't even begin to imagine, my mother would choose my brother as her substitute decision-maker and I was right there in town—

The Chair: A bad example.

Ms. Smith: —a bad example; exactly—then by removing this provision, I would be precluded if we were only going to go with the Health Care Consent Act or the Substitute Decisions Act as being the only guidelines for our homes.

The Chair: Any additional discussion?

1050

Mrs. Witmer: Again, it was not the intent. There currently is a hierarchy of decision-making that is set out in the Health Care Consent Act. As currently written, this does appear to be in conflict with that. I think it's important that we have clarity in our decision-making.

Ms. Smith: I don't believe there's any conflict. We'll be opposing this motion.

The Chair: I'm going to call the vote. Those in favour of the motion? Opposed? The motion is lost.

That brings us to PC motion number 52.

Mrs. Witmer: In light of the discussion we've just had, I withdraw this motion.

The Chair: That brings us to NDP motion number 53.

Ms. Martel: I move that subsection 6(7) of the bill be struck out and the following substituted:

"Development of initial plan of care

"(7) When a resident is admitted to a long-term care home, the licensee shall complete an assessment of the resident's needs and utilize the results of this assessment to guide the written plan of care. If the results of this assessment are in conflict with the assessment provided by the placement coordinator, the long-term care home shall immediately consult with the resident's placement coordinator to determine whether the individual was assessed as presenting a high risk to other residents of the long-term care home, and such finding may be cause to void the individual's admission to the long-term care home in which case the placement coordinator will proceed to find an alternate health care setting for this resident."

Under the section as it appears in the bill, there already is an obligation on the licensee to do an assessment within the times provided in the regulation, so I have no concern that the licensee has a requirement to do this. My concern is what the results of the licensee's assessment might be once they've had a chance to do that and if there is a conflict. We hope it doesn't happen, but there may be the potential that not all of the information for some reason makes its way to the placement coordinator or, secondly, from the placement coordinator to the home. So if, after having done that assessment, the licensee determines that the individual would not be suitably placed in that particular home but requires other care—clearly from my perspective, this would be around issues of behaviour, around issues of aggression or violence—then the placement coordinator would have to find another placement for that particular individual.

My concern also is that there is from time to time—and this is an unfortunate reality—a situation where not all of the relevant information might be disclosed to the coordinator by, for example, a family member or a substitute decision-maker who has information that may be extremely relevant. If that information isn't provided to the placement coordinator, then that coordinator is not in a position to pass that on. So at the time of the assessment, if it's very clear that there is quite a discrepancy between what was provided and what seems to be the case with the resident once assessed, there should be some kind of mechanism that can be triggered so that a more appropriate placement can then be worked out with the coordinator in the home.

The Chair: Discussion?

Ms. Smith: We'll be opposing this amendment. We feel that the requirements for admission to a home, which now set out more fulsome assessments under subsection 41(4), will address some of Ms. Martel's concerns. As well, in motion 141, the government will be looking at ensuring that assessments are done within the preceding three months, and if there is a significant change in the person's condition, we reassess them. We are also concerned that this provision would allow for there to be conflicting paperwork for a home to try to discharge a resident. We have made substantial changes to the legislation that will allow for fulsome assessments and to ensure that we are properly assessing those who have particular behavioural needs before they are admitted to any given home.

Ms. Martel: I had one thing: If there is conflicting information, then that should be a cause for concern and it should also prompt some action. If it is clear as the licensee does the assessment that the information that came from the coordinator is not fulsome or is not correct and, as a result, the placement of the resident in a home where his or her needs can't be met is an issue of safety to him or her or to staff or to other residents, then I think we need to deal with that.

So I'm not so much worried about conflicting information; I'm worried that if there is conflicting information, there's probably a good reason for it and we need to get to the bottom of it. If that conflicting information clearly shows that it's not an appropriate placement in a long-term-care home, we need to be doing something about that. That's the concern that I have with respect to this section.

The Chair: Any other discussion? I'll call the vote. Those in favour? Opposed? The motion is lost, bringing us to NDP motion number 54.

Ms. Martel: I move that section 6 of the bill be amended by adding the following subsection:

"Ministry to incur costs

"(9) The ministry shall be responsible for any costs incurred by the licensee in complying with subsection (8)."

It's very clear that under this whole section, plan of care, there are duties and obligations that are placed on the licensee.

The Chair: Prior to discussion—

Ms. Martel: You're going to rule it out of order?

The Chair: —I'm going to rule it out of order. Standing order 56: "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown."

It's a financial obligation for the allocation of public funds, and I must rule it out of order, bringing us to PC motion number 55.

Mrs. Witmer: I'm prepared to withdraw motion 55, since the government has introduced motion 56, which is quite similar.

The Chair: Government motion 56.

Ms. Smith: I appreciate that, Mrs. Witmer. I thought ours was just a little bit cleaner, but I was going to try to do some friendly amendments to yours. This is easier.

I move that paragraphs 1, 2 and 3 of subsection 6(10) of the bill be struck out and the following substituted:

"1. The provision of the care set out in the plan of care.

"2. The outcomes of the care set out in the plan of care.

"3. The effectiveness of the plan of care."

The Chair: Discussion?

Ms. Smith: Sorry, Chair. It's kind of self-evident. It makes it a bit clearer. It puts it in the appropriate order: the provision, the outcomes, the effectiveness. There was some concern raised by a number of stakeholders on the language that we were using in documenting how the effectiveness of the care set out in the plan of care will be evaluated. In fact, what we wanted to get at was documenting the effectiveness of the plan of care. This just clarifies all of that.

The Chair: Any other discussion? I will call the vote. Those in favour of the motion? Opposed? It is carried, bringing us to NDP motion number 57.

Ms. Martel: I move that subsections 6(10), (11) and (12) of the bill be struck out and the following substituted:

"Documentation

"(10) The licensee shall develop and maintain documentation and reassessment of resident care and plan of care in accordance with provincially approved common assessment and care planning systems to reflect each resident's individual care needs."

This was submitted by OANHSS. The point here is to recognize that residents will have individual care needs, but to ensure that how they appear in a home, are kept in a home, provided to the director or to anyone else who might have a reason to have them, that the way that is outlined and the expectations of how it will be outlined in document form are ones that should be commonly approved. So whether the ministry sets them and gives some direction to the home of what they're looking for in terms of how that's documented, I think that would make more sense so that there is some consistency across all homes as to how this information is written, set out and kept and recorded.

The Chair: Further discussion?

Ms. Smith: I believe that the provisions that we just adopted in motion 56 are clearer. I would also note that in 36(2)(b), we have reg-making authority to develop regulations "requiring and governing the assessment and classification of residents for the purpose of determining care requirements and other needs." So in the regulations, we do address the need for assessment and classification of residents, and I believe that addresses some of the concerns that Ms. Martel is raising here. I believe our previous amendment under motion 56 provides a clearer outline of what we want in subsection 6(10).

1100

The Chair: Any other discussion? I'll call the question. All those in favour of the motion? Opposed? The motion is lost.

Government motion 58: Ms. Smith.

Ms. Smith: I move that subsection 6(11) of the bill be amended by striking out "at least every three months" in the portion before clause (a) and substituting "at least every six months."

Mrs. Witmer: We have made an amendment to this section, but instead of changing the three months to the six months, we have suggested that the plan of care be reviewed and revised when there is a significant change in status, with no time definition.

The Ontario Medical Association did raise some practical questions regarding the documentation and evaluation of a plan of care as well as questioning the frequency of the assessment. I know this is a change, but they were still concerned about the practicality of frequently repeated documentation and the onerous administrative burden this was going to create and the need for them to spend more time on administrative tasks, and they felt that this additional administrative responsibility was going to take time away from real hands-on care for the residents. There was also concern expressed by many of the long-term-care homes.

The Chair: Other debate?

Ms. Smith: Yes. We have in fact seen to addressing some of the concerns around onerous paperwork by reducing it to every six months as opposed to three months. We do address a change in the residents' care needs in clause 6(11)(b). Many residents in our long-term-care homes, as you know, Chair, and as everyone around this table knows, suffer from many chronic conditions, and the average stay in a home is about two and a half years. We think it's important that every six months we revisit the plan of care. We don't think that's too onerous a requirement. So that's why we put together this proposal and we support the revision every six months.

The Chair: I will call the vote. Those in favour of the motion? Opposed? It is carried.

This brings us to PC motion number 59.

Mrs. Witmer: In light of the motion that has just been passed, as I say, they did move from a three- to six-month assessment and my motion referred to a significant change in status, so I would withdraw this now.

The Chair: That brings us to NDP motion number 60.

Ms. Martel: I move that section 6 of the bill be amended by adding the following subsection:

"Same

"(11.1) The review and revision required by subsection (11) shall be done in such a way that ensures the plan of care continues to cover all aspects of care as set out in subsection (4), and, at a minimum, shall be carried out by the attending physician and registered nurse responsible for the resident's care."

This was a suggestion made by OANHSS. The point of the matter is, more than anything else, to ensure that the assessment is complete and that it's done by regulated health care personnel who would be in a very good position to note whether or not there were changes in medical conditions, declining medical conditions, that would require then a revision to the plan of care.

Ms. Smith: I believe that the concern about the reassessment being done by certain health care professionals is addressed by the fact that in subsection 6(12), where we talk about the reassessment, we refer to subsections (5) and (6) as applying to a reassessment. Subsection 6(5) is the integration of assessments and care, so it ensures that all staff and others involved in the different aspects of care collaborate. So it's the requirement for collaboration and involvement. Both of those sections—collaboration and involvement—apply to the reassessment. So I think that specifying in this amendment that the attending physician and registered nurse be the ones carrying out the reassessment is actually narrower than our requirement, which requires integration of everyone involved. So we will not be supporting this amendment, as we feel it's already addressed in subsections 6(11) and (12).

Ms. Martel: Just as a clarification, my amendment says "at a minimum." It doesn't say "at a maximum" or that it should only include the attending physician and registered nurse. But it does say that, as part of the group involved in the assessment, those two individuals, at a minimum, should be included. So I don't see that it's restrictive. I think that it sets out at least two of the partners who should be there along with anybody else who's involved in the plan of care.

Ms. Smith: I would just point out that it's redundant because through the reassessment it is required that "the licensee shall ensure that the staff and others involved in the different aspects of care of the resident collaborate with each other," so that would include everyone.

The Chair: I shall call the vote. Those in favour of the motion? Opposed? Motion is lost.

Shall section 6, as amended, carry? Carried.

Moving then to—

Ms. Smith: Section 6.1? Sorry.

The Chair: There's a new section, section 6.1. I move now to government motion 61.

Ms. Smith: I move that the bill be amended by adding the following section:

"Assessment only with consent

6.1 Nothing in this act authorizes a licensee to assess a resident's requirements without the resident's consent or to provide care or services to a resident without the resident's consent."

This is a provision that's in the long-term-care act now. We believe that it provides more clarity for the licensees and the staff as well as residents and their substitute decision-makers with respect to consent in the plan of care.

The Chair: Discussion? I'll call the vote. Those in favour? Opposed? Carried.

That brings us to government motion 62.

Ms. Smith: I move that the French version of subsection 7(3) of the bill be amended by striking out

"assure la permanence dans le foyer à tout moment" and substituting "soit de service et présent au foyer en tout temps."

The Chair: Discussion?

Ms. Smith: It's just a clarification and a correction in the translation.

The Chair: I call the vote. Those in favour? Opposed? Carried.

That brings us to NDP motion 63.

Ms. Martel: I move that subsection 7(4) of the bill be amended by striking out "except as provided for in the regulations."

The Ontario Nurses' Association raised this with us in their submission. In this particular section we're talking about a licensee's requirement to have a registered nurse on duty 24/7, and that that registered nurse should not, when they are on duty as part of that 24/7, be considered as administration or a director, but be there to be providing hands-on care. If that is the case and if that is the intention, and it should be, then I don't know what circumstance would be acceptable to allow for something other than that in the regulations. As currently drafted, subsection 7(4) does just that. It sets out at the start that "During the hours that an administrator or director of nursing and personal care works … he or she shall not be considered to be a registered nurse …except as provided for in the regulations." So you have to mean one or the other. If we're serious that we're going to have a registered nurse on duty providing hands-on care 24/7, then I don't know what circumstances or other provisions there should be that wouldn't allow for that. I think having a provision that would allow for that in regulations does just that.

The Chair: Ms. Smith.

Ms. Smith: Obviously, we are committed to this notion since we are the ones who brought in the regulation, but I would note that there are certain circumstances and situations in smaller and rural areas where we are having some difficulty in meeting the requirement. We want to be sensitive to that and we want to maintain the flexibility in order to address certain geographic or workforce realities, so that's why we've introduced the notion of a regulation-making ability.

Ms. Martel: If I might, Mr. Chair, then that begs the question, if a licensee, especially in a rural area, is not able to meet this particular requirement, is it because they are not receiving enough funding from the government in order to meet their requirement? I think that's probably a serious issue for many of the homes with respect to staffing at all levels, not just in rural areas either. So the only circumstance I can see where there would be a need to have this in regulation is because a particular home can't meet the requirement because of inadequate funding to hire the nurses needed to do that. I just think that if we're serious about this, that a nurse has to be there 24/7 and not doing administrative duties during that time, then this has to change and the funding has to be provided to allow that to happen.

1110

Ms. Smith: Oh, it was all going so well, Mr. Chair. I feel compelled to note for the committee that the government has invested over $740 million into long-term care over the last three years. We've hired 4,800 new staff, including 1,100 new nurses. We have made substantial investments. We are committed to this. A provision, however, as Ms. Martel would know, coming from the north and from a somewhat remote area, although many would argue that Sudbury is the centre of the universe, especially those from Sudbury—we would note that there are rural areas that are having some struggles in finding RNs to cover, and we just want to have the ability to address those concerns.

Ms. Martel: I am compelled to note for the committee that the government promised $6,000 of enhanced care for every resident in every long-term-care home, and we know that as of the last budget and in the fourth year of this government, the government has only managed to cough up $2,000 of that $6,000 for enhanced direct care. So I think if the government coughed up the remaining $4,000 per resident annually that they promised, every home would be in a position not just to have the RNs that they require, but the PSWs, the health care aides, the support staff etc.

Ms. Smith: My colleagues have asked that I note that it's not just northern, but there are rural areas that are having trouble, just to keep everybody happy. Duly noted.

Call the question, Chair, unless Mrs. Witmer has something to add.

The Chair: I call the question. Those in favour?

Ms. Martel: Chair, can I have a recorded vote?

The Chair: Recorded vote.

Ayes

Martel.

Nays

Fonseca, Leal, Ramal, Rinaldi, Smith.

The Chair: The motion is lost.

NDP motion 64.

Ms. Martel: This has to do with adequate funding by the government for long-term-care homes too, so I know you're going to rule it out of order.

The Chair: Yes. Do you wish to withdraw it?

Ms. Martel: Yes.

The Chair: It's withdrawn.

NDP motion 65.

Ms. Martel: I move that the bill be amended by adding the following—

The Chair: Sorry. I'm too fast.

I will ask the question: Shall section 7, as amended, carry? Carried.

Now NDP motion 65. I apologize for that.

Ms. Martel: I move that the bill be amended by adding the following section:

"Minimum care

"7.1 Every licensee of a long-term care home shall ensure that each resident of the long-term care home receives a minimum of 3.5 hours of nursing and personal care each day from registered nurses, registered practical nurses, personal support workers and health care aides, of which a minimum of .68 hours must be provided by a registered nurse."

If I can speak to that, this has been an ongoing concern that I have raised, beginning with the debate at second reading, and it certainly was an ongoing theme that we heard during the course of the public hearings. I just want to put on the record those groups who made comments with respect to having a minimum standard of 3.5 hours during their submissions or in their verbal presentations during the question-and-answer. They include CUPE, ONA, SEIU, RNAO, CARP, OFL, Family Council Network Four, Ontario Society (Coalition) of Senior Citizens' Organizations and Care Watch, Multiple Sclerosis Society of Canada—Ontario division, Alliance of Seniors, and CAW council, to name a few.

The reason that I have spoken about this extensively both on second reading and during the course of the public hearings is that I feel very strongly that when there is no minimum of care, the care of residents declines, and I continue to feel very strongly that that was evidenced during the report that was done by PricewaterhouseCoopers in 2001, after the standard of care of 2.25 hours that the NDP had in place had been cancelled by the Conservatives. I note that during a resolution that was put forward by the Liberals in 2001, Ms. McLeod and Mr. Gerretsen took a similar approach and made it very clear on the record that if there aren't standards, then the standard drops. The PricewaterhouseCoopers study commissioned by the Ministry of Health and paid for by them was clear evidence and proof of that.

Secondly, in the recommendations from the Casa Verde inquest, an inquest that looked into the deaths of two residents at the hands of another who was aggressive, recommendation 29 very clearly states that the Ministry of Health and Long-Term Care, in the interim of having an updated study such as the PricewaterhouseCoopers, should fund and set standards that would increase staffing levels on average to no less than 0.59 registered nurses' hours per resident per day and 3.06 per resident per day overall nursing and personal care for the average Ontario case index.

We have taken that recommendation, which was made some time ago, and upgraded it, because we know that the care levels of residents have increased, to reflect a proportion that is similar to the one outlined in the Casa Verde recommendation, or the recommendation by the coroner's jury. So the 0.68 would be an update as a percentage of that which appeared in the Casa Verde recommendation, which was 0.59.

As well, the amendment makes it very clear who is to be involved in the hands-on delivery of care and who needs to be counted in that equation. We're very clear to say that has to be registered nurses, registered practical nurses, personal support workers and health care aides, and no other, including administrative staff or dietary staff etc. What we are very concerned with and focused on are those individuals who on a daily basis have an interaction with residents because they are providing them with care.

So, in conclusion, this matter of minimum standards of care and the need to have minimum standards of care I think was repeated again and again during the course of the public hearings. We all heard that, both from family councils and from workers themselves. The 3.5 reflects what is happening in a number of other provinces.

Finally, the division of who should be involved makes it very clear that it has to be those people who are providing hands-on care on a daily basis.

So I hope that people will accept this amendment.

The Chair: Discussion?

Ms. Smith: We won't be supporting this motion. We would direct committee members to motion number 85. For a number of reasons, this motion should not be included in the legislation. It would be ill-advised to include an actual number, 3.5, in legislation. As we have recognized, care needs change. The previous one was 2.25, so 3.5 in legislation would be very difficult to amend at some point in the future. We would note as well that including 0.68 for a registered nurse goes against what we heard from various presenters, including the SEIU representatives, who would not include registered nurses in their number at all, so it's interesting that that would be provided for by Ms. Martel, given that some of her followers do not support it.

I would just like to take the opportunity to advise the committee again that in his auditor's report of 2002, the auditor did note that the PricewaterhouseCoopers report which Ms. Martel referred to considered only the amount of care provided, not the quality of care. And according to the consultants, the study's limitations included the fact that data for many of the comparative jurisdictions were gathered from three to five years earlier than the Ontario data and that several of the jurisdictions were required to submit the data for funding purposes, which may influence data quality, therefore questioning the validity of the study.

I also note that the government has reported that we are at 2.86 hours of care; through the funding that we have contributed to the system and through the hiring that we've done, we are presently at 2.86. Ms. Martel noted that other jurisdictions are at 3.5, and I believe that is just false. We don't have any evidence that any jurisdiction in Canada has a minimum staffing standard or is meeting a minimum staffing standard of 3.5. I would note that in Alberta, the minimum standard is 1.9 and their target is 3.5: no evidence that they are meeting the target. New Brunswick has indicated that they are moving toward a minimum standard but have nothing in legislation. Saskatchewan's minimum standard, I believe, is 2.1, not 3.5. So I would just, for the record, indicate that there is

no jurisdiction in Canada that has a minimum legislated standard, and it would be inappropriate to include this provision in our legislation.

The Chair: Mrs. Witmer next.

Mrs. Witmer: I think on this particular issue there was general agreement that there was certainly a need for more personal care and services for the residents within the long-term-care homes. I do believe that if the government was going to live up to its obligation and promise of 2003 to provide each resident with an additional $6,000 for care, that would go a long way to improving the level of care that was currently provided.

There were some very heartbreaking, heart-wrenching stories that we heard from staff in the long-term-care homes who just simply couldn't provide for the needs of residents. In fact, I left there just a little bit shaken when I heard about what was happening to some of the people and how their needs, for example, were not being appropriately addressed because there simply wasn't enough funding to provide for the support and care that was necessary.

1120

Having said that, I know that the government, when I look ahead, has put in some enabling wording under section 15 which could allow for some debate and discussion during regulation development. When we take a look at this particular issue, I do believe it more appropriately should be addressed in regulation. But I think we need to not look at it in a cookie-cutter approach manner, as saying "a minimum." I think we need to make sure that resident care funding is needs-based. I think that's what we need to keep in mind, the individual needs of all of the residents. That may be more or it may be less. The reality is, residents are not getting the level of care that they need, according to the presentations that were made to us, and we need to somehow remedy that situation.

Ms. Martel: Let me make some comments. I find it interesting that the Liberals have a much different perspective on the PricewaterhouseCoopers report in government than they did in opposition. In opposition, the results of PricewaterhouseCoopers in terms of Ontario residents in long-term-care homes being dead last in every category of care were used extensively by former Liberal leader Ms. McLeod and by Mr. Gerretsen, who is now a cabinet minister. So what was good in opposition does not appear to be good in government, and I find that a little bizarre.

Secondly, with respect to the government's assertion that right now the standard of care that we have is, by the government's estimation, 2.86 hours, frankly, I have trouble believing that number, because I think the government used, for this particular comparison, the paid hours rather than the worked hours in their calculation. We may get some clarification about that. But in using paid hours instead of worked hours, you would find that the calculation would be much less, because the use of worked hours is actually the provision of hands-on care. So I have some difficulty with the government's number of 2.86, because I don't think it's that high. We certainly heard from any number of presenters, both CAW and SEIU, who had done work on trying to determine hands-on care in their own homes that in almost every case it was less than 2.25, which had been the standard in place in 1995.

Thirdly, with respect to number 85, which is the government's amendment on care and staffing standards, I would note very clearly that there is nothing in this provision that says there actually shall be a standard that is provided in the regulations. I'd just point to amendment number 85, which says that every licensee of a long-term-care home shall ensure that the home meets the staffing and care standards provided for in the regulations. Well, they may be provided for in the regulations and they may not, because there is nothing in amendment 85 that compels the government to actually develop the regulations that every licensee should have to abide by. So I have very significant concerns that this may be passed and we may never see that regulation. There certainly isn't a timeline set out and we certainly haven't seen a regulation since the government was elected, even though in the last election campaign the Liberals promised residents and their families very specifically that they would reinstate a minimum standard of care.

I also note that last week the minister, in terms of his conversations to the media, was having none of this standard of care, so I am very perplexed by the conversion on the road to Damascus. Frankly, I wonder how serious he is about actually implementing the regulation, given that the government hasn't done anything yet, in the fourth year, in this regard, and given his comments to the media last week, which would clearly indicate otherwise and clearly indicate that he was not interested in establishing any minimum standard.

Finally, with respect to SEIU, my recollection was that they were concerned that an RN acting in the capacity of a director of nursing be considered in part of the staffing standard. That probably should be clarified, because that was certainly my recollection, that when they talked about RNs, it was in the context of being a director, not in the position of providing hands-on care.

Finally, with respect to the 0.68 hours, that came directly from the Ontario Nurses' Association. We ran that amendment by a number of unions—CUPE, ONA, SEIU in particular—and nobody had any problem with it.

The Chair: Any other discussion?

Ms. Smith: I would just like to remind the committee and Mrs. Witmer, who I think has a little bit of amnesia, that it was her government that removed the minimum standards of 2.5, that removed the requirement for 24/7 RNs, that didn't have surprise inspections and that removed any minimum bathing standards. So I totally empathize with her point of view on some of the presentations we received, but let's not forget the legacy that you left behind.

With respect to Ms. Martel and her perspective, again, I think it's inappropriate to include this in statute. I think it should be in regulation, and that's what we have enabled ourselves to do through motion 85. I would remind

you that there were presentations—in fact, there was one presentation that didn't want to include RPNs. I believe they were members of the SEIU, front-line workers who said that RPNs just handed out drugs and that they in fact did no hands-on care, so if we were to limit it to hands-on care, in their view it was only health care aides. I actually believe there were two different presentations from front-line workers—I think they were in Sudbury—that were that prescriptive. We did hear from others who would include RPNs but not RNs. We heard from others who would include RNs but not the director of care. We heard from some who would include dietary aides who assist in feeding and others who wouldn't. There was no consensus, I would argue, from all of the presentations on what should be included, and therefore I think we need to do some work with the stakeholders in the sector on what should be included in a staffing and care standard.

As well, with respect to paid hours and worked hours, in my discussions with some of the organizations, paid hours is what they would accept, so I think that there is actually no consensus around paid hours or worked hours. You may want to go back and revisit that.

So I would suggest that our motion 85 provides the government with the ability to set those standards, to consult with the sector in order to determine what should be included in those standards.

Just as a final note, you were concerned about the minister's statements last week. The minister is very concerned about setting minimum standards, and you'll note that in section 85 we talk about staffing and care standards, not minimum standards.

The Chair: Mrs. Witmer?

Mrs. Witmer: Yes, I do need to respond to the parliamentary assistant. I am very proud of the legacy that our party has on long-term care. Our government did initiate the construction of 20,000 new beds after there was no construction for 10 years. We did provide $1.2 billion. We also did set about to establish a renovation capital plan for the renewal of the D beds, which was going to be followed with a capital plan for the renewal of the C and B beds in order that we would eliminate three- and four-bed wards and make all homes wheelchair-accessible and also with washrooms adjacent and private dining room/living room spaces for smaller groups of residents. So I'm very proud of the track record that we have.

I would remind the parliamentary assistant that it was her government that made the commitment in 2003. It was one of the promises that have been broken thus far that each resident was going to be provided with an additional $6,000 for personal care. Now, if that amount of money was actually being provided to residents—and, as I say, it was a Liberal promise—there would be improved staffing and there would be more care being provided. So I would simply encourage the government to live up to its promise and follow through.

The Chair: Ms. Martel?

Ms. Martel: A couple of other things.

I'm going to reinforce for the record that this particular amendment that we've put forward today was given and shown to SEIU Local 1 before I put it in. They had no trouble either with the amount of hours that would be dedicated to registered nurses nor with the list of four health care professionals that would be provided in a standard of care. So on behalf of SEIU Local 1, I want to reinforce that.

1130

Secondly, with respect to who should be involved, it was the government that said it would reinstate the regulation that had the minimum standard in terms of care, 2.25 hours. If you look at that regulation that was implemented by the NDP in 1993, it included registered nurses, registered practical nurses and health care aides. It did not include PSWs because, I suspect, in 1993 that probably wasn't a category of staff in most homes in the province of Ontario. It's very clear that we, in the regulation, had outlined who would be included, and the government, when in opposition, said that it would reinstate that very standard, which did include those three categories. We have added PSWs because it's clear that since 1993, there has been an additional category of staff worker who provides direct hands-on care, and they should be included in a standard as well.

With respect to paid hours versus worked hours, I raised this because I continue to question the validity of the government's level of care that they say is now being provided, and that is 2.86. Frankly, if the government had used worked hours of homes, I can tell you that that standard would be much less. So the issue I have with the number that the government is using right now is, what was that based on—paid hours or worked hours?—because there would be a significant difference downward if what we were looking at was the actual number of hours worked by staff providing care, which is the criterion we should be looking at in terms of assessing the level of care that we are actually providing.

I think that's where I want to end, Chair. Thanks.

The Chair: I will call the question.

Ms. Martel: Recorded vote.

Ayes

Martel.

Nays

Fonseca, Ramal, Rinaldi, Smith.

The Chair: The motion is lost.

That brings us to NDP motion 66.

Ms. Martel: I move that the bill be amended by adding the following section:

"Specialized units

"7.2.(1) The ministry shall establish specialized units in long-term care homes for the care of residents who are prone to aggression, and set staffing standards for these units to ensure they are staffed sufficiently with the appropriately skilled regulated health care professionals who have training in managing these behaviours and that

there is enough staff to care for these residents so they cannot harm themselves or others.

"Unregulated staff

"(2) Any unregulated staff assisting regulated health care professionals in these specialized units must first have received the training known as U-FIRST training."

This recommendation comes from two sources—one from the brief that we heard from Concerned Friends of Ontario Citizens in Care Facilities. The direct wording comes from the recommendation that was made in the Casa Verde inquest—I believe it's recommendation 18, although I can't find it quickly—from the members of the coroner's jury, who were extremely concerned that there has been a great deal of aggression and aggressive behaviour. It was focused on in Casa Verde because of two deaths, but during the course of the over 50 days when presentations and testimony were heard, there were certainly numerous other examples of other deaths and other serious incidents in homes.

What this does is respond to a recommendation from the coroner's jury that we have to recognize that there are going to be residents who come into homes who are prone to aggression, prone to violence, and need to be cared for in very specific ways with very specific training that does not put them at harm themselves or allow them to harm staff or, just as importantly, harm other residents. Not only should we have specialized staff to do that, but they have to be in a unit in sufficient enough numbers to ensure that appropriate care can be provided. I think all those things have to be done to respond to that important recommendation.

The Chair: Discussion?

Ms. Smith: Yes. I would note that under clause 178(2)(f), we do provide the ministry with the ability to establish special programs in the units. This would go some way to addressing Ms. Martel's concerns. As well, section 16 allows us to create programs. Under government motion 128, we will be addressing the admission into any created specialized units through the CCAC. We do have the ability to create specialized units. I don't believe we're in a position to do that in legislation at this time. They don't presently exist, and it would be too prescriptive to set out in detail in the legislation their creation.

With respect to unregulated staff, I would note that subsection 74(1) provides for training, and we do in fact deal with training dealing with dementia. I think it is inappropriate to outline U-FIRST training in legislation when that is a particular type of training—although well recognized and certainly well respected with respect to dementia—developed by the Alzheimer Society. It would be inappropriate to list that in legislation and not allow for some changes in the future.

The Chair: Any other debate? I will ask, then, shall section 7.2 carry? All those in favour? Opposed? It is lost.

We come now to motion number 67, which has been replaced with motion number 67R. Government motion number 67R, I believe, has been distributed.

Ms. Smith: Sorry, Chair, I don't have it. Thanks.

I move that subsection 8(1) of the bill be struck out and the following substituted:

"Restorative care

"(1) Every licensee of a long-term care home shall ensure that there is an organized interdisciplinary program with a restorative care philosophy that,

"(a) promotes and maximizes independence; and

"(b) where relevant to the resident's assessed care needs, includes, but is not limited to, physiotherapy and other therapy services which may be either arranged or provided by the licensee."

The Chair: Any debate?

Ms. Smith: I would just note that motions 67, 68 and 69 are all dealing with a similar issue. In our amendment, we have recognized that it's an interdisciplinary program and that it's actually not a restorative care program but a philosophy. We are looking at promoting and maximizing independence of our residents. We want to ensure that that includes looking at their assessed needs and providing them with therapy, including physiotherapy.

I would just note for clarity that the only difference between motion 67R and motion 67 was changing the words "and to the therapy services" to "and other therapy services." It was a typo.

The Chair: Any other debate? I'll call the question. Those in favour?

Ms. Smith: Sorry, I think Mrs. Witmer may have had something to say.

The Chair: Sorry. Mrs. Witmer.

Mrs. Witmer: I guess what we need to be sure of here is, if there are expectations that this is going to be delivered, we also need to make sure the funding is going to be provided. We don't want to raise unrealistic expectations on the part of the residents and their families.

The Chair: I will call the question. Those in favour of the motion? Opposed? It is carried.

That moves us to NDP motion number 68.

Ms. Martel: Mr. Chair, based on the motion that was just passed, I will withdraw this one. But I will reiterate Mrs. Witmer's concern that the funding be available to provide the services the government references.

The Chair: That brings us to PC motion number 69.

Mrs. Witmer: I'll withdraw that and just add again that this is a new and unfunded program. It needs funding.

The Chair: That brings us to NDP motion number 70. Do you wish to read it before I declare it out of order?

Ms. Martel: Yes, I would Chair, thank you.

"Sufficient funding

"(3) The ministry shall ensure that sufficient funding is supplied to permit the requirements of this section to be met."

The Chair: I have to rule it out of order.

Ms. Martel: I understand.

The Chair: I will now ask the question. Shall section 8, as amended, carry? It is carried.

That brings us to government motion number 71.

Ms. Smith: I move that subsection 9(1) of the bill be amended by striking out "and assessed needs."

The Chair: Any clarification required, any discussion?

Ms. Smith: I would note that this is similar to motion 72. We heard loudly from some of our long-term-care home providers that they felt that this threshold that we were placing to meet the assessed needs was too much, too high. So we want to ensure that we are providing an organized program of recreational and social activities in the homes to meet the interests of our residents, obviously going some way to meet their needs. But setting a threshold of ensuring that we meet their needs is too high.

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The Chair: If there's no debate, I will call the question. Those in favour? Opposed? It is carried, bringing us to PC motion number 72.

Mrs. Witmer: I'll withdraw the motion. Our concern was around the new programming that was being required to meet the assessed needs of the residents and the lack of funding to provide that.

The Chair: Now we have NDP motion number 73.

Ms. Martel: I move that section 9 of the bill be amended by adding the following subsection:

"Sufficient funding

"(3) The ministry shall ensure that sufficient funding is supplied to permit the requirements of this section to be met."

The Chair: As this is a money motion, it is out of order.

I will now ask the question. Shall section 9, as amended, carry? It is carried, bringing us to NDP motion number 74.

Ms. Martel: I move that section 10 of the bill be amended by adding the following subsection:

"Sufficient funding

"(3) The ministry shall ensure that sufficient funding is supplied to permit the requirements of this section to be met."

The Chair: In order to be consistent, I must rule it out of order.

I will now ask the question. Shall section 10 carry? It is carried, bringing us now to PC motion number 75.

Mrs. Witmer: I move that section 11 of the bill be amended by striking out "to meet the medical needs of the residents."

That is similar to government motion 76. Basically, I think it speaks to what is required and doesn't go beyond.

Ms. Smith: We support this.

The Chair: If there's no other debate, I will call the vote. Those in favour of the motion? Opposed? It is carried.

Ms. Smith: I withdraw motion number 76.

The Chair: Motion number 76 is withdrawn, bringing us to NDP motion number 77.

Ms. Martel: I move that section 11 of the bill be amended by adding the following subsection:

"Sufficient funding

"(2) The ministry shall ensure that sufficient funding is supplied to permit the requirements of this section to be met."

The Chair: The motion is out of order.

I will now ask the question. Shall section 11, as amended, carry? It is carried.

That brings us now to NDP motion number 78.

Ms. Martel: I move that section 12 of the bill be amended by adding the following subsection:

"Sufficient funding

"(3) The ministry shall ensure that sufficient funding is supplied to permit the requirements of this section to be met."

The Chair: The motion is out of order.

I will ask the question. Shall section 12 carry? It is carried, bringing us now to NDP motion number 79.

Ms. Martel: I move that section 13 of the bill be amended by adding the following subsection:

"Sufficient funding

"(2) The ministry shall ensure that sufficient funding is supplied to permit the requirements of this section to be met."

The Chair: The motion is out of order.

I will now call the question. Shall section 13 carry? It is carried, bringing us now to NDP motion number 80.

Ms. Martel: I move that section 14 of the bill be amended by adding the following subsection:

"Sufficient funding

"(3) The ministry shall ensure that sufficient funding is supplied to permit the requirements of this section to be met."

The Chair: The motion is out of order.

I will now ask the question. Shall section 14 carry? It is carried, bringing us now to government motion number 81.

Ms. Smith: I note that 81 is somewhat similar to 84, which is Mrs. Witmer's motion, although we are moving to keep the first line of subsection (2).

I move that subsection 15(2) of the bill be struck out and the following substituted:

"To be included in program

"(2) The volunteer program must include measures to encourage and support the participation of volunteers as may be further provided for in the regulations."

We heard a great deal of concern around our listing of who had to be contacted. What we are trying to do in this legislation, in this particular section, is to encourage and support the participation of volunteers and to give homes some indication of where we expect them to go in encouraging or in recruiting volunteers. So we want to leave in the notion of the encouragement and support of the participation of volunteers, but we will be taking out the listing of who should be contacted.

The Chair: Any other discussion? We'll call the vote. Those in favour of the motion? Opposed? It's carried.

This brings us now to NDP motion 82.

Ms. Martel: I move that subsection 15(2) of the bill be struck out and the following substituted:

"Sufficient funding

"(2) The ministry shall ensure that sufficient funding is supplied to permit the requirements of this section to be met."

The Chair: The motion is out of order. That will bring us to PC motion 83.

Mrs. Witmer: We've dealt with the issue of volunteers, so I would withdraw that motion.

The Chair: That is withdrawn.

PC motion 84.

Mrs. Witmer: I would withdraw that motion regarding volunteers, since the government has introduced an amendment. I would just mention at this point in time that I don't think you can force community relations, and I hope that the volunteer program will be flexible, based on resident needs and community resources.

The Chair: Have you spoken to the motion that you've withdrawn?

Mrs. Witmer: I have.

The Chair: That was good.

Okay. I will now ask the question. Shall section 15, as amended, carry?

Ms. Smith: It carries.

The Chair: Thank you. It is carried.

We have a new section 15.1, government motion 85.

Ms. Smith: I move that the bill be amended by adding the following section:

"Staffing and care standards

"15.1(1) Every licensee of a long-term care home shall ensure that the home meets the staffing and care standards provided for in the regulations."

Mr. Jeff Leal (Peterborough): Mr. Chair, can I have a recorded vote on this one when it comes up for a vote?

The Chair: Yes, certainly. Discussion?

Ms. Smith: I believe we've already had most of the discussion on this point. Certainly we did hear from a number of presenters. As I've indicated in our previous discussion—I really don't think we have time to rehash the entire previous discussion, but there was some discussion about what should be included. I believe that we need some consultation on that. I also know that we heard from some PSWs who came before us and talked about their tasks, and not all of their time would be included in hands-on care. They talked about loading linen carts, cleaning equipment, putting away laundry, preparing meds, answering phone calls, those kinds of things.

We heard different numbers of hours of care that front-line workers felt they were providing. We heard about bath people as being someone else who should be included, whether or not they're personal support workers or RPNs. We also heard from a variety of people who did not believe that RNs should be included. So we believe that our motion here is broad enough to allow for consultation on what should be included in a staffing and care standard and would allow us to bring that in under regulation.

The Chair: Ms. Martel.

Ms. Martel: I don't intend to rehash the arguments I already made. I want to focus specifically on this particular amendment and ask if the government is open to a friendly amendment. Right now it's very clear that the licensee has some responsibility to ensure that the home meets staffing standards. There isn't a similar responsibility to ensure that the regulation is actually drafted.

I would propose an amendment that would include "that shall be" between "standards" and "provided." The new amendment would read as follows: "Every licensee of a long-term-care home shall ensure that the home meets the staffing and care standards that shall be provided for in the regulations."

The Chair: We have an amendment to the amendment. Any discussion on it?

Ms. Smith: Can we get some direction from leg. counsel as to whether that's an appropriate friendly amendment?

Mr. Ralph Armstrong: The office of the legislative counsel, in our role—as you know, we serve in several roles: advising the members, advising the government, advising the assembly—has always taken the position that it is inappropriate to require the government to make regulations. It goes against the philosophy of the Legislature in giving the allocating of power to the Lieutenant Governor in Council. It can create a situation in which, despite the best intentions at the time that a legislative provision is made, the reality of the situation prevents a regulation from being made in a timely fashion or being made at all and opens the possibility to judicial review actions, possibly, that are not in anybody's interest but are based upon a perceived failure to proceed with the requirement, when in fact only the ordinary processes of government, including concerns by stakeholders, are being addressed in the regulation-making process.

I have been long-winded here. I apologize. I guess it all comes to what I said at the beginning. We've always advised against mandatory regulation provisions.

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Ms. Martel: So if the counsel says it's inappropriate to make that friendly amendment, let me add two things, then, with respect to the government amendment: I looked elsewhere in the bill for the regulation-making process that the government was going to put forward, and it may be that you're going to accept either my amendment or Ms. Witmer's amendment that comes from the language of Bill 36, which includes very specific provisions for public consultation in regulations, sets out timelines etc. I didn't see the government move that, although I'm assuming that one of those two is going to be accepted. Do you want to respond to that first?

Ms. Smith: Yes. I'm sorry; I thought that ours went over it last night. We were going to walk one in. It's a variation on a theme. We haven't received our amendment. It's coming, I'm told. We said publicly last week that we would be seeking public consultation on the regulations. We have looked at the two motions that have been put forward and are bringing forward our own. By the end of lunch you will have that. It's number 3-some-

thing, so I figured we'd be doing it tomorrow. I meant to have it to you this morning.

Ms. Martel: That's okay. Because we didn't have that conversation, I looked specifically for that because you had said that on the record. So I just assumed maybe you were having a conversation with Ms. Witmer and you were going to accept hers, which was going to be fine, because they're the same. So we will wait to see that.

The second point I do want to make on the record, though, is that in whatever sense I can urge the government to deal with this, I am asking you to do deal with this. I think that all of us heard during the course of the public hearings the desperate need there is to ensure that there are adequate staff in homes and that there are some standards attached to that so we can be sure that the money that goes to homes is going to that care. So, even though I can't move an amendment that says "shall be" to actually ensure that the government does that, I am urging you in the strongest terms to do that, and as soon as possible, based on what we heard during the course of the hearings.

The Chair: Ms. Martel, your amendment is in fact on the floor. Do you wish to withdraw it or to vote on it?

Ms. Martel: I'm going to withdraw it based on what legislative counsel has said to us, and I'm just speaking directly to the government's motion now.

The Chair: Ms. Witmer?

Mrs. Witmer: I would not be able to support this amendment here regarding staffing and care standards in that it speaks only to the licensee having to meet that and doesn't address the fact that what may be contained in the regulations would require additional funding, and there's no indication that the government is going to be providing that funding, so I don't know how we could achieve that.

I'm pleased to see that the government has put this enabling legislation, this amendment, in here but I do think we need to continue to keep in mind that staffing needs to be resident-based, and I hope that funding will also be considered.

Ms. Smith: I'm not at all surprised that Ms. Witmer is taking that position, given that she removed the standards before. We recognize that a minimum standard doesn't necessarily address all the needs, and that's why we've addressed it broadly as a staffing and care standard. I would just say to Ms. Martel, obviously our government did not bring motion 85 in lightly. There has been a lot of consideration made and we certainly heard from various stakeholders, so we will be moving forward as the motion indicates.

Mr. Leal: I requested a recorded vote, Chair.

The Chair: Yes. I will call the question. A recorded vote on government motion 85.

Ayes

Fonseca, Leal, Martel, Ramal, Rinaldi, Smith.

The Chair: Those opposed? The motion is carried.

Government motion 86.

Ms. Smith: I move that section 16 of the bill be struck out and the following substituted:

"Standards for programs and services

"16(1) Every licensee shall ensure that the programs required under sections 7 to 15, the services provided under those programs and anything else required under those sections comply with any standards or requirements, including outcome measures, provided for in the regulations.

"Matters included

"(2) Without restricting the generality of subsection (1), every licensee shall comply with the regulations made under clause 178(2)(f)."

With respect to the outcome measures, that's for consistency of drafting. It's considered the term that people refer to as opposed to just "outcomes."

With respect to clause 178(2)(f), we're requiring the licensees to provide or offer certain types of accommodations and services, and we just want to make sure that that's rolled into this section.

Mr. Leal: Can I get a recorded vote on this one?

Interjection.

Ms. Martel: Mr. Chair, can I just have a chance to flip over to 178?

Ms. Smith: That's a reg-making power.

Ms. Martel: Is that a new one?

Ms. Smith: No. Clause 178(2)(f) requires "licensees to provide or offer certain types of accommodation, care, services, programs and goods to residents, and governing the accommodation, care, services, programs and goods that must be provided or offered, including establishing standards or outcomes to be met."

Ms. Martel: That's the one that's further on. Sorry, Monique. I was flipping to 178. What's the number at the top of the amendment you're referring to?

Ms. Smith: That I'm talking about right now? I'm talking about motion 86.

Ms. Martel: So 178(2)(f) is an existing amendment in the bill. You're not changing that?

Ms. Smith: It's an existing provision in the bill.

Ms. Martel: Can you just give me one second, just so I can—

Ms. Smith: We're just cross-referencing 178(2)(f) into section 16.

Ms. Martel: And the reference again is to standards, that they'll be included in terms of the development in the regulations, what the standards look like. Am I correct about that?

Ms. Smith: Yes.

The Chair: Any other discussion? A recorded vote has been called for.

Ayes

Fonseca, Leal, Martel, Ramal, Rinaldi, Smith, Witmer.

The Chair: There being none opposed, the motion is carried.

I will now ask the question. Shall section 16, as amended, carry? It is carried.

That brings us to PC motion 87.

Mrs. Witmer: I move that section 17 of the bill be amended by striking out "by anyone."

Obviously, you can't protect residents from abuse by anyone. It's not possible to ensure, for example, that a family member wouldn't abuse a resident. Sometimes there is financial abuse. And there is an obligation in the bill of rights to allow for privacy, so sometimes, if a resident chooses to meet with someone, it's difficult to prevent abuse from happening because they have the right to meet in privacy. So I think the current language is a bit of a recipe that could lead to failure. It would be difficult for anybody to meet that obligation. I think we have to be realistic and remove the words "by anyone." Sometimes the resident would leave the long-term-care home as well, so again, how could you protect them from individuals they might meet?

Ms. Smith: In our motion 88, we address residents who are absent from the home. In this section, we're concerned that this amendment would water down the provisions related to the protection of residents. Obviously, our foremost concern is the protection of residents. I would note that we do not say that they shall ensure that no one is abused, which would be a higher standard that would be very difficult to meet, but we are saying that the home shall protect residents.

If there is a concern with respect to someone meeting privately, there is nothing to preclude the nurse, the RPN, the personal support worker from knocking on the door and entering to check on the resident, for whatever reason, which they would normally be doing in the course of their duties, which would allow them the opportunity to ensure that the resident is protected from any abuse.

We think it's important that we include "by anyone," because if we don't, it's hard to foresee which individuals could have access. So we think the broader terminology is necessary, and we just highlight that the utmost thought in our mind is the duty to protect our residents.

The Chair: Any other discussion?

Ms. Martel: I don't disagree with the parliamentary assistant. The only thing that worries me is really around financial abuse. You've got all different kinds of family members meeting with the residents, sometimes with different agendas. If a family member insists that there be a private meeting and the resident goes along with that, I remain just a bit concerned about how you'll ever monitor that possibility. It's that form of abuse that I'm nervous about in terms of being able to monitor and manage, especially if people are meeting in private. There's a power relationship there that could be really difficult. I just raise that with you as a concern, and the ministry can think more about how they want to deal with that particular issue.

Ms. Smith: We have heard that concern, and obviously it's a difficult one to address. Certainly, we've heard from some residents' groups and resident advocacy groups that feel we are being overly protective if we try to interfere in their relationship with their family. We all recognize there's a fine line there of trying to both protect the residents but also allow them their autonomy as individuals. But I don't believe that by excluding "by anyone," we are in any way helping the situation of protection.

The Chair: I'm going to call the vote. Those in favour of the motion? Opposed? It is lost.

Members of the committee, if we do government motion 88, we will have completed section 17. So if we could do government 88 prior to lunch.

Ms. Smith: You give me such strength to get through this one since I didn't think we were ever going to end for lunch.

The Chair: The hungrier you are, the shorter the debate will be.

Ms. Smith: I move that section 17 of the bill be amended by adding the following subsection:

"If absent from the home

"(2) The duties in subsection (1) do not apply where the resident is absent from the home, unless the resident continues to receive care or services from the licensee, staff or volunteers of the home."

Mr. Speaker—sorry, Mr. Chair. I was going to promote you right there, before lunch.

Interjection.

Ms. Smith: I believe this goes some way to address Mrs. Witmer's concern raised earlier and that we did hear about before the committee. We cannot protect our residents when they are off-site in the care of others, but we certainly do want to make sure that the licensees continue to be responsible if they are with the resident in some kind of activity situation. That's why we've brought this motion.

The Chair: Any discussion? Those in favour of the motion? Opposed? It is carried.

Shall section 17, as amended, carry? Carried.

Thank you. We are now recessed until 1 o'clock.

The committee recessed from 1203 to 1303.

The Chair: We are back in session. We are at PC motion 89.

Mrs. Witmer: I will withdraw that motion, since the government has a very similar motion in number 90.

The Chair: Thank you. That brings us to government motion 90.

Ms. Smith: Chair, I had confirmed to my colleagues that I would have government motion number 3-something on the amendments. Can I just hand that out quickly?

The Chair: Certainly.

Ms. Smith: Thank you. Sorry, Chair. I'd undertaken to have that by the end of lunch, so I wanted to get it to them.

Moving to motion 90, I move that subsection 18(3) of the bill be struck out and the following substituted:

"Communication of policy

"(3) Every licensee shall ensure that the policy to promote zero tolerance of abuse and neglect of residents

is communicated to all staff, residents and residents' substitute decision-makers."

The Chair: Any clarification?

Ms. Smith: Yes. There had been some concern that we were requiring the communication of the promotion of a zero tolerance abuse and neglect policy to a wide variety of people. We have determined that a number of the individuals listed in the original subsection (3) can be dealt with through the posting of that policy, so we have limited it to those who we feel really do require the policy: the staff, residents and substitute decision-makers.

Mrs. Witmer: The current wording was somewhat unrealistic as far as it being achievable. Really, it indicated that anybody, whether it was a delivery person, ambulance attendant or someone doing a repair, would be in included. So this is certainly realistic and can be achieved.

The Chair: If there's no other discussion, I will call the vote. Those in favour? Opposed? It is carried.

I will now ask the question. Shall section 18, as amended, carry? It is carried.

There are no amendments to section 19. Shall section 19 carry?

Ms. Smith: What happened to motion 91?

Mrs. Witmer: Yes, what happened to the motion?

The Chair: Number 91? Well, it's too late. We snookered you on that one.

Ms. Smith: Unanimous consent to reopen 18 to allow the motion?

The Chair: I ask for unanimous consent to reopen section 18.

Interjection.

The Chair: Okay. PC motion 91.

Mrs. Witmer: I move that section 18 of the bill be amended by adding the following subsection:

"No reinstatement for abusers

(4) Despite the provisions of any collective agreement or the Labour Relations Act, 1995, where a staff person has been terminated by the licensee for abuse under the zero tolerance policy and there has been a finding of abuse, arbitrators and the Ontario Labour Relations Board shall have no jurisdiction to reinstate the employment of the staff person."

There was a concern expressed to us that in the case of someone being accused by another member of staff, they were afraid of the retaliation that could occur if that staff member was reinstated. Again, I think we need to ensure that someone who has been terminated for abuse does not come back and jeopardize resident safety.

The Chair: Any discussion?

Ms. Smith: We've done a review of case law and haven't found that to be the case. Our advice is that in certain situations, an arbitrator, given this high threshold, will not find abuse where there is some question so as to not find themselves falling under this provision. So we will not be supporting this provision.

The Chair: If there's no other discussion, I will call the vote. Those in favour? Those opposed? Carried.

I will again ask the question. Shall section 18, as amended, carry? Carried.

Government motion 92.

Ms. Smith: I move that subsection 20(2) of the bill be amended by striking out "who has forwarded" and substituting "who is required to forward."

This is just to clarify that someone who is required to forward must then provide the documentation. In this case, the way it was formally drafted, it would only be for those who actually had met the requirement and had forwarded, so we want to make sure we capture anybody who was supposed to have forwarded.

The Chair: Any discussion? Those in favour? Opposed? Carried.

Shall section 20, as amended, carry? It is carried.

Moving now to PC motion 93.

Mrs. Witmer: I move that section 21 of the bill be amended by adding the following subsection:

"Annual report

"(4) The director shall prepare an annual report from the reports received under subsection (2) as the basis of quality improvement and performance management activities by the ministry in relation to long-term-care homes, and for such other purposes that may be provided for in the regulations."

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The Chair: Do you wish to speak to it?

Mrs. Witmer: No. I think it's self-explanatory.

Ms. Smith: There's nothing precluding the ministry from doing this in policy, and I don't think it's appropriate to put it in the legislation. As it stands, the annual inspection and investigation of complaints reports are posted on a website, so they are readily available.

The Chair: I will call the vote. Those in favour of the motion? Those opposed? It is lost.

Shall section 21 carry? It is carried.

That moves us now to government motion 94.

Ms. Smith: I withdraw this motion.

The Chair: Thank you. That moves us to PC motion 95.

Mrs. Witmer: I move that subsection 22(3) of the bill be amended by striking out "and subsection (2) does not apply to residents."

In some respects, I think this contradicts the element of dignity that is set out in the fundamental principle. If you take a look at paragraph 6 of subsection 3(1), it clearly sets out the right of residents to "exercise the rights of a citizen," and in paragraph 17 of subsection 3(1), to "raise concerns or recommend changes in policies and services...." Given these enforceable rights, there is really no reason, then, to excuse residents from knowingly providing false information in a report related to section 22.

The Chair: Ms. Smith?

Ms. Smith: We'll address this in our motion 96, where we limit it to those residents who are incapable. Subsection (2) does not apply to residents who are incapable, so we are restricting it to only those who are incapable. That'll be our motion.

Mrs. Witmer: We received a significant amount of input on this issue from homes, and also from the Ontario Medical Association, which indicated that they believe it to be absurd that a resident of a long-term-care home should be enabled, by law, to make knowingly false statements or reports to the director about staff with impunity and without any responsibility to complain with integrity and truthfulness. They recognize that residents need to feel comfortable about bringing forward concerns and complaints, but this actually could have reverse consequences.

The RBJ Schlegel Research Institute for Aging suggests that subsection 22(3) almost excludes residents themselves from being truthful. They say that this could perhaps have the consequence of discouraging researchers from attempting to advance the knowledge base for long-term care through home-level research work. So there was some concern expressed about this.

Ms. Martel: Can I just ask a question in this regard? I appreciate that the government is trying to limit it to people who are incapable, and what I'm wondering is whether there is a definition that is to be used only for this. The last thing you want is for the director to be making different decisions about who's incapable or a home making different decisions or different allegations when trying to define "incapable." So is there a standard term that is referenced that can be included, just so we all know?

Ms. Smith: I'd ask my colleague to turn to motion 9, where we define "incapable." We accepted that this morning: "'Incapable' means unable to understand the information that is relevant to making a decision concerning the subject matter or unable to appreciate the reasonably foreseeable consequences of a decision or a lack of decision...."

Ms. Martel: Okay. I appreciate that. Can I ask one other question? In this particular case, is it the executive director of the home who makes that decision or the determination of "incapable" itself for the purposes of this act?

Ms. Smith: Sorry, I'll just see. Chair, can I have legal counsel address this? Is that appropriate?

The Chair: Yes, that's fine. If you would take a chair and state your name, please.

Ms. Bella Fox: Bella Fox, legal counsel, Ministry of Health. This is a provision that creates an offence. So the decision would be made as to whether the person was incapable at the time a decision was made to proceed with a prosecution under this section. We're saying that those who are incapable would not be subject to prosecution.

Ms. Smith: So in order to use the defence, the court would determine whether or not the person was capable at the time.

Ms. Martel: I'm trying to figure out how you even get that far, if you understand what I mean. How would you get to the point of even having an offence provision?

Ms. Fox: You would have to have a determination made or an assessment done that the person was capable at the time that they provided the information, or else you couldn't proceed with the offence provision.

Ms. Martel: Okay. And you would normally do that between the home, between the director and—it would work in that way?

Ms. Fox: The crown is going to proceed with the prosecution, so it would be the evidence that was presented to make a case for prosecution. If the evidence showed that the person was incapable at the time, then you couldn't proceed with the prosecution.

Ms. Martel: But who would even have the crown become involved, then? There's a step here that I'm missing. Someone would have to go to the crown and say—

Ms. Smith: This is how I see it, and, Bella, you'll correct me. An individual would lodge a complaint that includes false information in a report to the director. The person against whom the complaint has been lodged would say that it includes false information. Then we would look at who lodged a complaint in the first place—a resident. Is the resident protected under subsection (2)? This is only looking at our revised subsection (2). Then the question would be, is that resident capable or incapable?

Ms. Martel: I'm still assuming, through that process, that it's probably the director who's going to make that decision, right, because the complaint has to go to the director.

Ms. Smith: Right. But because it's an offence provision, it would actually be the court that's determining whether or not the person was incapable and could use the defence under subsection (2).

Ms. Martel: Okay. It was the step in there of having it go even that far and how that would happen.

Ms. Smith: What we're intending to do by protecting those who are incapable is, before that complaint goes any further, they would determine if that person is incapable or not; so, should this be an offence or not? We're trying to give some protection to them.

Ms. Martel: I'll live with that. Thanks.

Mrs. Witmer: Forgetting the words "capable" or "incapable," in taking a look at this section, which relates to reporting certain matters to the director and then this exception for residents, I guess the interpretation by some of the people who made presentations before this committee was—and I want to go back to the OMA, who are saying that they would be hesitant to recommend employment to their members in long-term-care homes under circumstances where they, meaning the doctor, may be subject to frivolous or vexatious complaints without repercussions. Then, you hear the Schlegel people saying that this section excludes residents from being truthful. So what protection is there for individuals against whom knowingly false statements and reports are made to the director? What consequences are there for the residents, who may be capable but are making these complaints?

1320

Ms. Smith: Well, now you're back in the capable-incapable argument. With your provision, all residents

could be found guilty of an offence if they have provided information that they know to be false. With our provision, we're saying that only residents who are capable could be found to be guilty of an offence if they provide information that they know to be false. So what protection is there for a member of the medical profession? That someone will be found to be guilty of an offence if they have knowingly given false information. Taking the resident out of the equation, if anybody does that, they're found to be guilty of an offence under this act. With a resident, we're saying if they're incapable, they're not guilty.

Mrs. Witmer: You're saying that in subsection 22(3)?

Ms. Smith: We're saying that in our motion number 96.

Mrs. Witmer: So you feel that your motion would protect all of the staff from any frivolous complaint?

Ms. Smith: Yes, and it would also protect a resident who is incapable, because we can't always predict what they will do.

Mrs. Witmer: Okay.

Ms. Smith: So we're still talking about your motion number 95.

Mrs. Witmer: Right. Then I would withdraw my motion.

The Chair: Okay, thank you. Before we do the next motion, just for committee business, there is agreement, I understand, to go till 4:30 today, and there is also agreement to start at 9 o'clock tomorrow morning. There was an example of blatant tardiness this morning, and I would ask that it not happen again.

Mr. Lou Rinaldi (Northumberland): Should the Chair set an example?

The Chair: I set a bad example this morning. I will set a good example tomorrow.

Mr. Leal: I was stuck in traffic, Chair.

The Chair: You were still here ahead of me.

Mr. Leal: There are better highways out of Peterborough.

The Chair: You may have been the slowdown, in fact, at the front of the line.

Coming now to government motion number 96.

Ms. Smith: I believe we've already had our discussion around this one.

I move that subsection 22(3) of the bill be amended by adding "who are incapable" after "does not apply to residents" at the end.

The Chair: Any additional discussion? I will call the vote. Those in favour? Opposed? It is carried.

Government motion number 97.

Ms. Smith: I move that subsection 22(4) of the bill be struck out and the following substituted:

"Duty on practitioners and others

"(4) Even if the information on which a report may be based is confidential or privileged, subsection (1) also applies to a person mentioned in paragraph 1, 2 or 3, and no action or other proceeding for making the report shall be commenced against a person who acts in accordance with subsection (1) unless that person acts maliciously or without reasonable grounds for the suspicion:

"1. A physician or any other person who is a member of a college as defined in subsection 1(1) of the Regulated Health Professions Act, 1991.

"2. A person who is registered as a drugless practitioner under the Drugless Practitioners Act.

"3. A member of the Ontario College of Social Workers and Social Service Workers."

This rewording of this provision actually is just for clarity. It kind of parses out the components of the section, and it adds to it the drugless practitioners because we didn't want to lose naturopaths and others under the Drugless Practitioners Act.

The Chair: Any other discussion? I'll call the vote. Those in favour? Opposed? Carried.

I will now ask, shall section 22, as amended, carry? Those in favour? Those paying attention? Thank you. That is carried.

That brings us to government motion number 98.

Ms. Smith: We withdraw government motion number 98.

Ms. Martel: Chair, may I just ask a question? Do these provisions appear somewhere else, then? That's the second time. It's the same provision, and I just wasn't clear on what you were trying to get at.

Ms. Smith: I can't just withdraw, just because I decide to?

Ms. Martel: Not when it happened twice with the same wording.

Ms. Smith: Well, the wording—

The Chair: We don't normally debate a withdrawn motion.

Ms. Smith: The amendment was supposed to bring it in line with the initial part, where it says, "any of the following has occurred or may occur." Actually, the other one was more clear on this. So we had "resulted in or may result," but we think "has occurred or may occur" captures it.

The Chair: Okay. PC motion number 99.

Mrs. Witmer: I move that subsection 23(5) of the bill be struck out and the following substituted:

"Other inquiries

"(5) If the director receives information from any source about the operation of a long-term care home, and is not required to have an inspector conduct an inspection or make inquiries into the matter, the director shall disclose the information to the licensee or the licensee's delegate."

This is just making it mandatory for that to happen; that is, to notify the licensee.

The Chair: Any discussion?

Ms. Smith: We have motion number 100, which we'll discuss, which makes clearer our position on who should be notified.

The Chair: I will call the vote on motion number 99. Those in favour? Opposed? It is lost.

That brings us to government motion number 100.

Ms. Smith: I move that subsection 23(5) of the bill be struck out and the following substituted:

"Other inquiries

"(5) If the director receives information from any source about the operation of a long-term care home, and is not required to have an inspector conduct an inspection or make inquiries into the matter, the director may disclose the information to another person, including the licensee, or to the residents' council or family council.

"Licensee to be notified

"(5.1) If the director discloses the information to the residents' council or family council under subsection (5), the director is required to provide the information to the licensee."

This is just to clarify that if that direction is made to the residents' council or the family council, then the licensee is definitely provided with the information.

The Chair: Any discussion? I will call the vote. Those in favour? Opposed? It is carried.

I will now ask the question. Shall section 23, as amended, carry? Carried.

It is carried, moving us to NDP motion number 101.

Ms. Martel: I move that section 24 of the bill be amended by adding the following subsection:

"Justice with dignity

"(2.1) Where a person alleges that he or she has been dismissed from a position as a staff member contrary to subsection (1), the person shall be reinstated in the position until the licensee establishes that the dismissal was not a prohibited retaliation."

ONA made this recommendation to us. In their submission, they said it uses federal legislation language with respect to whistle-blowers, and they felt that made the whole notion stronger that someone shall be reinstated. That hopefully will result in more people coming forward and not being concerned that, by coming forward, they would end up losing their jobs until it could be proven that that loss was directly related to an employer or a licensee trying to retaliate.

The Chair: Discussion?

Ms. Smith: This would in fact create a permanent stay. We don't think that that's appropriate. Any person who is found to be caught by subsection 24(2) can be reinstated and made whole by the reinstatement and/or the provision of damages. We would note that subsection 25(2) cross-references the Labour Relations Act, and under the Labour Relations Act, one of the remedies for discrimination is an order to reinstate. So there's nothing precluding an arbitrator from reinstating, but this would create a permanent stay to that point, and we don't support that.

The Chair: If there's no additional debate—

Ms. Martel: I just wondered how it created a permanent stay if it also said, "The licensee establishes that the dismissal was not a prohibited retaliation." Doesn't that afford the licensee an opportunity to make those arguments?

1330

Ms. Smith: But this would ensure that you were reinstated "until the licensee establishes," until the arbitration, which is a stay of the dismissal until an arbitration, which is not the normal collective bargaining process.

Ms. Martel: On the flip side of that, though, what is there to encourage an employee from whistle-blowing if the result of that would be that they would be dismissed and would have to go through arbitration in order to prove that they were dismissed because of retaliation? So now you have someone who has lost their job and is not employed until such time that it can be proved at an arbitration that they were dismissed because of retaliation. I think this works the opposite way, that they can continue in their position, continue to earn an income, until such time as the licensee or the employer can prove something else. So I'm just concerned about where the onus falls, then, and if you're not really making it difficult for a staff person to make a choice about whistle-blowing if they think that for a period of time it will leave them without any income.

Ms. Smith: The onus is already on the licensee to establish that the dismissal was not prohibited retaliation, so the onus is clearly on the licensee. In your language you say "until the licensee establishes." That would be at an arbitration. There's no other mechanism where a licensee could establish or meet the onus. The arbitration provisions allow for reinstatement and damages, so they would be made whole at that time.

Ms. Martel: I understand that. The question is, how long does it take to get to arbitration? Making it whole at that time might be fine if you've got another source of income coming in to carry you through that period. My concern would be that even the prospect of being made whole because you have a good case is going to stop someone from whistle-blowing because they just can't wait that period of time to be out of work and out of pay. Do you know what I'm getting at? Do you see what I'm saying?

Ms. Smith: I know what you're getting at, but we don't want to get involved in the actual negotiation of collective agreements, nor do we want to start gerrymandering the arbitration process. There is a process in place for dealing with conflicts between employees and employers that is covered by a collective agreement. This would create an exceptional circumstance where we would actually be staying a dismissal until an arbitration is heard. What I would be worried about is that anyone would say, despite whatever reason they were terminated for, "Well, I'm going to initiate my whistle-blowing protection. You in fact didn't terminate me for X; you terminated me for whistle-blowing. Therefore, I want to be reinstated immediately until we determine what I was terminated for." It would provide a protection that anyone could try and institute.

Ms. Martel: But if these are the provisions under federal law, don't we have a precedent set already?

Ms. Smith: I've never seen these provisions under federal law, and the federal legislation that we were

pointed to by CUPE did not address the issue that was raised.

Ms. Martel: The one that I used was not raised by CUPE, it was raised by ONA.

Ms. Smith: I'm not familiar with the federal legislation that you're referring to, but this is similar to the Occupational Health and Safety Act as it stands in Ontario, as well as the new Public Service Act.

The Chair: Can I call the question?

Ms. Martel: I'm reading from the ONA brief; I'll just put this on the record, and then I'll leave it.

Page 15 of the ONA brief says, "Section 24 does not have the same level of protection for whistle-blowers as is contained in federal legislation. For example, section 24 does not have the limited 'justice with dignity' provision found in the federal accountability legislation where discharged whistle-blowers are reinstated in some cases until the employer proves just cause for discharge."

They reference footnote 29; I'm just looking to see if it's a report. The reference is, "See section 201 in Federal Accountability Act that amends section 19.6 in the Public Servants Disclosure Protection Act." Is there no interest at all in having a look at the federal legislation to see if we can incorporate some of it?

Ms. Smith: There was federal legislation referenced by CUPE, and we did look at that particular piece of legislation. I'm not sure if it's this one—

Ms. Martel: No.

Ms. Smith: —and I'm trying to confirm that.

Ms. Martel: I've got a copy of the brief, if somebody wants it. I'm referencing page 15 of ONA's brief right now. Page 26 gives the references, and the reference here was to 29, which looks at some other acts.

Ms. Smith: I appreciate your point and your position, but I think we would prefer to have consistency with the Occupational Health and Safety Act and other provincial legislation that's already in place. So I think we can call the question.

The Chair: I will call the question.

Ms. Martel: Can I have a recorded vote?

Ayes

Martel.

Nays

Fonseca, Leal, Ramal, Rinaldi, Smith.

The Chair: The motion is lost.

That brings us to government motion 102.

Ms. Smith: I move that subsection 24(6) of the bill be struck out and the following substituted:

"May not encourage failure to report

"(6) No person mentioned in paragraphs 1 to 4 of subsection (5) shall do anything to encourage a person to fail to do anything mentioned in clauses (1)(a) to (c)."

What we're doing in this amendment is just a rewording to be clear, so it's "shall do anything to encourage a person to fail" as opposed to "reward a person for failing."

The Chair: We'll call the vote. Those in favour? Opposed? Carried.

I will now ask the question. Shall section 24, as amended, carry? It is carried.

That brings us to PC motion 103.

Mrs. Witmer: I move that subsection 25(1) of the bill be struck out and the following substituted:

"Complaints about retaliation

"(1) Where a staff member complains that an employer or person acting on behalf of an employer has contravened subsection 24(1), the staff member may,

"(a) if there is a collective agreement in place, have the matter dealt with by final and binding settlement by arbitration; or,

"(b) if there is no collective agreement in place, may file a complaint with the board, in which case any rules governing the practice and procedure of the board apply with all necessary modifications to the complaint."

This is almost word for word the same as what's there. It just provides a little more clarity.

Ms. Smith: Not quite, Mrs. Witmer. Your amendment would require that if there is a collective agreement in place, the staff person would only have recourse to the collective agreement, and if there's no collective agreement in place, they could go to the board. What we're doing in subsection 25(1) as drafted is to ensure that an employee has the right to go either through their collective agreement to arbitration or to the board. The reason for that flexibility is that in situations such as those we're referring to in section 24, the whistle-blower protection, there is sometimes some controversy within a union as to whether or not a union wants to take that complaint forward. Not casting any aspersions on anyone, but we do want to give the flexibility or the ability to a worker to go straight to the board and not have to rely on their union to take forward a complaint, in case there is a situation where there are two union members involved. We wouldn't want intra-union conflict to stop them from having their say as an individual worker. As well, the Occupational Health and Safety Act in Ontario allows for a worker to go through both venues.

The Chair: I will call the vote.

Ms. Smith: Sorry, I should just clarify: It's not both venues; it's either venue. I want to make sure it's not that they have both. It's either, but it is their choice.

The Chair: I will call the vote. Those in favour? Those opposed? The motion is lost.

That brings us to PC motion 104.

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Mrs. Witmer: This takes us to complaints.

I move that subsection 25(4) of the bill be struck out.

This is the part that deals with complaints to the Ontario Labour Relations Board. As the section on onus of proof is currently worded, there is a presumption of guilt here on the operator until proven innocent, which is somewhat contrary to the normal rule.

Ms. Smith: I would just note that in the new public service legislation on whistle-blowing protection, subsection 140(13):

"Onus of proof

"On an inquiry into a complaint filed with the Public Service Grievance Board, the Ontario Labour Relations Board or the Grievance Settlement Board under this section, the burden of proof that an employer or a person acting on behalf of an employer did not act contrary to subsection 139(1) lies on the employer or the person acting on behalf of the employer," which is the mirror language to what we have in our legislation.

The Chair: If there's no further debate, I will call the question. Those in favour? Those opposed? It is lost.

Shall section 25 carry? Carried.

That brings us to government motion 105.

Ms. Smith: I move that section 26 of the bill be amended by adding "where the provision of the information is required or permitted by this act or the regulations" at the end.

This is just for clarity. The section as it read previously was rather broad, and we just want to make sure that it's where the provision of the information is required or permitted, not just any information any time.

The Chair: If there is no debate, those in favour? Opposed? It's carried.

Shall section 26, as amended, carry? Carried.

That brings us now to section 27. Shall section 27 carry? Carried.

Now to section 28, government motion 106.

Ms. Smith: I move that paragraph 4 of subsection 28(1) and subsection 28(4) of the bill be amended by striking out "or pharmaceutical agent" in each case.

We've determined that "drug" will be defined in regulation and we wanted to ensure that natural products are included. "Pharmaceutical agent" does not adequately ensure that natural products are captured, so in the regulation we'll be ensuring that "drug" captures everything that it should.

The Chair: If there's no further debate, those in favour? Opposed? Carried.

That brings us now to government motion 107.

Ms. Smith: I move that paragraph 5 of subsection 28(1) of the bill be struck out and the following substituted:

"5. Restrained, by the use of barriers, locks or other devices or controls, from leaving a room or any part of a home, including the grounds of the home, or entering parts of the home generally accessible to other residents, other than in accordance with section 30 or under the common law duty described in section 34."

The Chair: No debate? Those in favour? Opposed? Carried.

That brings us to PC motion 108.

Mrs. Witmer: I move that subsection 28(5) of the bill be amended by striking out "unless the resident is prevented from leaving."

Currently, it reads, "The use of barriers, locks or other devices or controls at entrances and exits to the home or the grounds of the home is not a restraining of a resident unless the resident is prevented from leaving." We've removed that.

The Ontario Long Term Care Association did speak to this, as did OANHSS, as did the Ontario Hospital Association and the Ontario Association of Residents' Councils. There was some concern that unless this type of amendment were made, the residents may well be considered restrained the day the act is proclaimed simply by living in a long-term-care home.

Ms. Smith: We've addressed some of the concerns of the OLTCA by our definition of secure unit. Through the various amendments that we've made up to this point, we've determined that "secure unit" is a section of the home that will be defined in the legislation. We're ensuring that the rights advice is provided if someone is moving into a secure unit.

With the previous amendment, we are ensuring that residents who go into a home that have the padlocks are considered to be restrained if they're not given the code, but we would include in their plan of care whether or not they're required to give the code. If they are not going to be given the code and it's included in their plan of care and they consent to their plan of care, then we're all done. If they are given the code, then they're not restrained.

Mrs. Witmer: Would you just review that again? Over 60% of the residents have some form of dementia. What are you saying about the code?

Ms. Smith: I'm saying that if it's determined in their plan of care that we shouldn't be giving them the code, then it would be an issue of consent to the plan of care. They would not be getting rights advice or the other protections as we've defined for restraint. That would be for those residents. If they are given the code, then they're fine. Obviously there's no issue. The codes are simply there for protection generally and are part of the building code standards. If they are being moved into a secure unit as we've defined it at that point, then the rights advice and the protections around the use of restraints are instituted, except for the hourly—what's the word I'm looking for?

Ms. Martel: Reporting.

Ms. Smith: —the reporting—thank you—which would not be required. I think that's a subsequent amendment we haven't got to yet.

Ms. Martel: That's actually what I was going to ask. I just want to clarify that. If you're not given the code and you agree to that, which essentially becomes a restraint, you're not saying that the home has to report that.

Ms. Smith: No. That would be part of their plan of care. That would not be considered the institution of a restraint. It's only when they go into a secure unit that we have to give them rights advice and only if they are restrained in a secure unit, i.e., use of restraints. Then you'd have to document that, but the mere existing in a secure unit is not going to require the documentation. I think that's the subsequent amendment that we haven't got to yet.

Ms. Martel: Or the fact that you don't have access to a code.

Ms. Smith: Yes.

Ms. Martel: I get it.

The Chair: I'll call the question. Those in favour of the motion? Those opposed? The motion is lost.

NDP motion 109.

Ms. Martel: Based on that discussion and the clarifications, I will withdraw this amendment.

The Chair: With 109 withdrawn, I will now ask, shall section 28, as amended, carry? It is carried.

That brings us to section 29, government motion 110.

Ms. Smith: I move that paragraph 2 of subsection 29(2) of the bill be struck out and the following substituted:

"2. Alternatives to restraining the resident have been considered, and tried where appropriate, but would not be, or have not been, effective to address the risk referred to in paragraph 1."

This is just to clarify that we're only trying them where appropriate. We're not insisting that they be tried if it's not appropriate.

The Chair: I will call the question. Those in favour? Opposed? It is carried.

Shall section 29, as amended, carry? It is carried.

That brings us to section 30, government motion 111.

Ms. Smith: I move that paragraph 2 of subsection 30(2) of the bill be struck out and the following substituted:

"2. Alternatives to restraining the resident have been considered, and tried where appropriate, but would not be, or have not been, effective to address the risk referred to in paragraph 1."

Again, the same rationale as our previous motion.

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The Chair: I can't say "same vote," so I will ask for those in favour. Opposed? Carried.

Moving to PC motion number 112.

Mrs. Witmer: Before I move it, can I ask the government if they feel that this has been addressed?

Ms. Smith: I think what you're doing here is to remove all consent and rights advice. What we've done is limit when you're required to give consent and rights advice to those moving into a secure unit. Your motion actually guts that.

Mrs. Witmer: I guess with all the changes that have been introduced by the government on this bill, it becomes difficult to determine whether some of the motions that we've put in place here are actually covered within other parts.

The Chair: I don't wish to be picky, but if we're going to debate this motion, you probably need to move it.

Mrs. Witmer: Okay. I will move that subsections 30(4), (5), (6) and (7) of the bill be struck out.

Again, the ability to move the residents within a home to a more appropriate level of care is important. There are lots of issues that are created here concerning that admission. We always have to balance a resident's right, a resident's safety, and that's always an issue when you're transferring someone to a secure unit. So there's an attempt here to ensure that all of the necessary precautions of rights and safety have been taken into consideration.

Ms. Smith: There's nothing in the legislation that would supersede section 34, which is the common law duty that a caregiver can "restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or to others." What we're doing through subsections 30(4) to 30(7) is to provide rights advice for someone who is about to lose their freedom. We think that's incredibly important, and certainly we're supported in that by the Advocacy Centre for the Elderly and other advocacy groups on behalf of residents. We think that is a necessity before someone is moved into a secure unit in a home.

Mrs. Witmer: Is the ministry going to be adding rights advisers at all?

Ms. Smith: We understand that the capability is there now to deliver the rights advice, and in the legislation we require that it be done promptly. So if your issue is timing, which I know was raised by some, section 34 still allows for a crisis intervention if there's an issue of timeliness. As well, section 47 of the Health Care Consent Act allows for crisis situations, so we do have two mechanisms to address if something needs to be done quickly. But the legislation does require that they receive—I would note, under subparagraph 30(4)1, "shall promptly give the resident a written notice," "shall promptly notify a rights adviser." So we do intend to move promptly.

Mrs. Witmer: Because that certainly was one of the concerns that had been addressed—the potential for a wait list to be established within the home—and that already adds pressure to the external—

Ms. Smith: And again, through our assessment process, prior to placement we do have the opportunity, where there is a wait list, to make sure that if someone is actually coming—this is a different section—from the outside into a secure unit in the home, they get that rights advice prior to admission. So that process can happen while they're still on the waiting list, and we can ensure that the appropriate consents and rights advice are given.

Mrs. Witmer: I would withdraw that motion, then. Those concerns hopefully will be further addressed by the government.

The Chair: That moves us to government motion 113.

Ms. Smith: I move that subsection 30(5) of the bill be amended by striking out "and" at the end of clause (b), by adding "and" at the end of clause (c), and by adding the following clause:

"(d) of any other matters provided for in the regulations."

When we have to give written notice to a resident of their rights with respect to consent and rights advice, we just want to be able to provide them with other information.

The Chair: If there is no debate, I will call the question. Those in favour? Those opposed? Motion is carried.

I shall now ask, shall section 30, as amended, carry? Carried.

Section 31: We move to government motion 114.

Ms. Smith: Ms. Martel had a concern about PASDs and withdrew hers, so this is where the definition appears in the legislation: subsection 31(2).

I move that the definition of "PASD" in subsection 31(2) of the bill be amended by striking out "intended to" and substituting "used to."

We just didn't want a limit to those devices that are only "intended to" be used, because some devices that aren't actually intended to be used are "used to." We want to be able to capture those as well.

The Chair: I will call the question. All those in favour? Opposed? It's carried.

That brings us to PC motion 115.

Mrs. Witmer: I'm going to withdraw that motion.

The Chair: That brings us to government motion 116.

Ms. Smith: I move that paragraph 1 of subsection 31(4) of the bill be struck out and the following substituted:

"1. Alternatives to the use of a PASD have been considered, and tried where appropriate, but would not be, or have not been, effective to assist the resident with the routine activity of living."

Again, this is "where appropriate," the language that we were using in previous references to restraints.

The Chair: No discussion? Those in favour? Opposed? It is carried.

Shall section 31, as amended, carry? It is carried.

Moving now to section 32: government motion 117.

Ms. Smith: I move that section 32 of the bill be struck out and the following substituted:

"Records, reporting on restraining of residents

"32. Every licensee of a long-term care home shall keep records in the home, as provided for in the regulations, in relation to the following:

"1. The restraining of a resident, other than a restraint permitted under section 30.

"2. The use of a PASD, within the meaning of section 31."

We heard a great deal about paperwork. In our attempt to streamline the paperwork, we noted that submitting the reports to the directors could be considered onerous, so we are asking that they keep the records in the home. As well, the addition of "1. The restraining of a resident, other than a restraint permitted under section 30" would address the opposition members' concerns and some of the concerns of our presenters about the need to document environmental restraints, including secure units. So that would be the no-notes-every-hour provision.

The Chair: Discussion? Those in favour? Opposed? It is carried.

Shall section 32, as amended, carry? Carried.

Shall section 33 carry? Carried.

We now have government motion 118.

Ms. Smith: I move that subsections 34(3) and (4) of the bill be amended by striking out "or pharmaceutical agent" wherever that expression appears.

Again, Mr. Chair, it is similar to the language we used earlier defining drugs in regulation.

The Chair: I call the vote. Those in favour? Opposed? Carried.

Shall section 34, as amended, carry? Carried.

Bringing us to PC motion 119.

Mrs. Witmer: I move that section 35 of the bill be struck out and the following substituted:

"Ombudsman

"The government shall establish a third-party disputes resolutions mechanism to,

"(a) assist and provide information to residents, their families and others;

"(b) act as an advocate for residents, their families and others or make a referral to a more appropriate advocate when the resident, family member or others feel unempowered and are unable to advocate for themselves;

"(c) advise the minister on matters and issues concerning the interests of residents;

"(d) resolve disputes between the licensee and the ministry; and,

"(e) perform any other functions provided for in the regulations or assigned by the minister."

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This would effectively eliminate the suggestion of the minister to establish an office of the long-term-care homes resident and family adviser.

We heard from OANHSS that they were disappointed that the original concept of an ombudsman office, as described in the commitment to care, had not been included in the act and instead we have this office of the long-term-care homes resident and family adviser. They still believe it's important to have an advocate available to residents, families, licensees, in mediating concerns and conflict and negotiating solutions and when the residents and families are not able to navigate the system themselves and when the licensee cannot resolve disputes it has with the ministry through the appeal or other processes.

This particular issue of an ombudsman was also raised by the Psychiatric Patient Advocate Office and the Concerned Friends of Ontario Citizens in Care Facilities.

As I say, it is recommending a third party disputes resolution mechanism, but it is eliminating the office as provided for here in the legislation—and you'll see later that there's another recommendation to deal with this.

Ms. Smith: We did hear a great deal about this issue. Leading up to the creation and drafting of the legislation, we heard about the need for a third party adviser/advocate; we had much input, again, at the hearings about how people would like to see this structured. Some people want advice, some people want information, some people want advocacy, some people want dispute resolutions. There wasn't a great deal of consensus.

What we also heard and what I think is one of the things that the government is now considering is the fact

that there was not consensus around a long-term-care ombudsman or adviser or third party adviser, but someone to deal with seniors' issues, writ large. So we've engaged in a discussion with the seniors' secretariat to look at whether we can create some kind of third party adviser that would deal with all seniors' issues, including long-term care, home care and retirement homes.

So we won't be supporting the creation of this entity. We do believe that in the legislation we do have dispute resolution mechanisms in place that deal with the complaints issues quickly and effectively, and we do feel that we are providing a great deal more information than was provided previously. We will be keeping the office of the long-term-care homes and resident family adviser provision because it allows the government to create it, but we will be looking at, through the seniors' secretariat, a larger structure that could deal with the concerns that were raised by many who appeared before the committee.

The Chair: I'll call the vote. Those in favour of the motion? Opposed? The motion is lost.

Number 120 is not a motion but is a notice. Do you wish to speak to it, Ms. Martel?

Ms. Martel: I would recommend voting against this section in its entirety. That recommendation was also made by the MS society, CARP, by PPAO, RCLO. Frankly, we've been advocating for some time for the current Ombudsman to have oversight capacity so that he can both provide advocacy and deal with complaints that arise in long-term care. So I think this section is not necessary from that perspective, because I think the current Ombudsman has all of the capabilities, the staff and the expertise to do what's here and, frankly, to go much further beyond.

I would also just like to make a point at this time that the seniors' advisory council, which gives advice to both the Ministry of Health and the minister for seniors' issues, put out a letter in 2005 very clearly stating that there should be an ombudsman for long-term care and that they had no confidence that someone who was not independent from the ministry was in a good position to deal with complaints or concerns of residents. So while I appreciate that the parliamentary assistant is saying they are asking the seniors' advisory council for input now, I can say that there was already a letter clearly on record that went to the minister from the council, which is made up of probably 13 different seniors' organizations, including the Royal Canadian Legion, Ontario Command, which very clearly pointed out their preference and what they wanted to see done. I think we should just deal with that letter and do what they requested both ministers to do probably as far back as May 2005. So I don't support this whole section, because I think we really should be moving to respond to the concerns that were already made, both by the Royal Canadian Legion and by the members, the organizations on the seniors' advisory council.

Ms. Smith: Just to the point of the seniors' advisory council: I have met with the council on a number of occasions, and they are actually also advocating for this third party position to be responsible for not only long-term care but other issues dealing with seniors, including home care, which is often mentioned, and retirement homes, which is getting more play because we're doing the review right now of the retirement home industry. So I would just note that there likely is broader acceptance for the notion of the senior third party review advocate, ombudsman, whatever term it ends up being.

As well, which I didn't note in our previous discussion, there is talk of a federal ombudsman. We believe that it was part of the Conservative election platform, but I have not confirmed that. We understand that it's being looked at at a federal level, so we want to ensure that whatever we're doing at a provincial level is not going to be in conflict with whatever is created at the federal level. It's just kind of late-breaking news that they're looking at something.

Ms. Martel: The feds can do what the feds want to do. That's fine. From my perspective, Ontario's Ombudsman should have oversight functions of long-term-care homes. I don't know if the feds are going to move on it or when, but I think the current Ombudsman is in a position to do that and we should be moving towards that. Thanks, Chair. That's it.

The Chair: I will ask the question, then. Shall section 35 carry? Carried.

Bringing us now to section 35.1, PC motion number 121.

Mrs. Witmer: I move that the bill be amended by adding the following section:

"Ombudsman

"35.1 The Ombudsman appointed under the Ombudsman Act is also the Ombudsman of long-term care homes and may make any investigations and reports with respect to long-term care homes as he or she may make with respect to any matter to which the Ombudsman Act applies."

So this is just a continuation of the discussion we've been having. This is recommended, of course, by the Royal Canadian Legion, Ontario Command. They did express concern. They were quite upset; they were disappointed that Bill 140 did not include an ombudsman to protect the seniors who were residing in nursing homes and who, they believe, are some of our most vulnerable citizens. I think we certainly all support that. They believe that in December 2003 Mr. Smitherman did make some sort of statement regarding a long-term-care ombudsman, and they really were looking for Bill 140 to provide the necessary clause to expand the current mandate of the Ontario Ombudsman to include long-term-care homes and be in a position where that individual could independently investigate complaints of care. I think for those persons who are looking for something other than what the government is suggesting in the form of some office, they are looking for someone to be totally independent from government.

The Chair: I will call the vote. Those in favour? Opposed? The motion is lost.

That brings us to NDP motion number 122.

Ms. Martel: Although my amendment is very much similar to Mrs. Witmer's, I'm going to read it into the record anyway and just make some comments about it.

"Ombudsman

"35.1 The Ombudsman may exercise any functions with respect to the long-term care home sector in Ontario that he or she may exercise with respect to any matter to which the Ombudsman Act applies."

So the particular provision that I put forward would give oversight function to the current Ombudsman to both advocate for and deal with complaints, systemic included, that come out of the long-term-care sector. I think the current Ombudsman has both the staff and the investigatory powers, and frankly the history of dealing with complaints. If Mr. Marin's place there in the last two years or so has been any indication, that office is quite capable and in the best position to act independently to advocate for residents and their families—both advocate and deal with concerns.

1410

I just want to reiterate that the Royal Canadian Legion, Ontario branch, very strongly felt that they had a commitment in this regard, as per a meeting they had with the Minister of Health in his office in March 2005. Their view in this regard has not changed, and they are not convinced whatsoever that this office of the long-term-care home resident and family adviser was what the minister promised. Indeed, they are very clear that there was to be independence here, and I don't see that the current office that is established—or could be established, because it says "may"—under section 35 will in any way, shape or form be independent of the government itself.

So both the Royal Canadian Legion and the seniors' advisory council in 2005 were very strong on this position. The Multiple Sclerosis Society of Canada also supported an independent function and the Ombudsman exercising these functions. It was supported as well by SEIU, CAW and CUPE.

We need a forum where someone who is truly independent has the opportunity and has the responsibility for responding to systemic problems and concerns that arise at a long-term-care home. In the letter that was put forward to both Ministers Bradley and Smitherman in 2005, the seniors' advisory council made it very clear that they had no confidence that these issues could be dealt with internally, that there had to be someone independent. I think the way to respond to all of those concerns is to grant the current Ombudsman oversight capacity in this regard.

Ms. Smith: I just want to clarify that in Kingston, in their submissions, the Ontario Command clarified their position on their meeting with the minister and said that he had discussed with them an ombudsman-like role and not, in fact, an ombudsman; or at least that wasn't their position in Kingston.

I also just wanted to clarify that while the MS Society and the seniors' advisory group, as well as perhaps the SEIU, had looked for a third party that was independent of government, I don't recall the MS Society or the seniors' advisory group asking that the current Ombudsman's role be expanded. I don't know if that was what you were saying. The independent third party, yes, but I don't think that either of those groups—I don't know about the SEIU—called for the expansion of the current Ombudsman's role. I just want clarity on that.

Ms. Martel: Just with respect to the Legion, who were very clear that the minister said, "ombudsman-like," they also made it clear in their submission that that didn't satisfy their concerns or that didn't mean for them the office of the long-term-care adviser that may be set up. So there is a clear distinction between what is proposed in section 35 and what the legion wanted, which is something that was far more independent. Under section 35, that office will not be independent of the government.

The Chair: I will call the question. Those in favour of the motion?

Ms. Martel: Can I have a recorded vote, Mr. Chair?

The Chair: Recorded vote.

Ayes

Martel, Witmer.

Nays

Fonseca, Leal, Ramal, Smith.

The Chair: The motion is lost.

That brings us to NDP motion number 123.

Ms. Martel: I move that subsection 36(2) of the bill be amended by adding the following clause:

"(a.1) governing temperature requirements for long-term care homes;"

This is the regulation-making section of the bill. Under this section, the Lieutenant Governor, i.e. cabinet, has the opportunity to make a number of regulations that affect various parts of this bill. This is a new addition. We had concerns raised, at least by CARP, about what was happening to long-term-care homes today as it becomes hotter and hotter in the summer. There are a number of long-term-care homes that aren't in a position, actually, to deal with residents' needs in that regard. They said specifically that Bill 140 should mandate that an air conditioning unit must be available in each long-term-care home to address the comforts and needs of residents and staff.

I didn't use that particular wording, but I do think the principle is one that we need to think about. Times are changing in terms of climate change and residents in long-term-care homes are frail, are elderly. In some of the sweltering heat last year, I do know that even my colleague Ms. Horwath had complaints from a number of residents in homes in her riding about the unwillingness of the operator to do anything to respond to that. I think this is an issue we need to get our heads around, and I ask for it to be put in the regulation section so the government would have the opportunity to do some work on it.

Mrs. Witmer: I would strongly support this motion. It was one that we had intended to introduce.

This past summer, we heard from individuals who found the temperatures within the homes uncomfortable. We heard primarily from family members who were concerned about their loved ones. I think part of the reason we're starting to hear about it now is that, number one, we have more residents than ever before living in homes. Many of them obviously have many more complex needs than in the past. Also, we seem to have a situation worldwide where temperatures are increasing, and more and more people in their own personal homes are looking to air conditioning to be more comfortable. So it really is something that needs to be considered within the regulations.

Ms. Smith: I feel compelled to weigh in, because I have to remind my colleague again that it was her government that set the building standards that didn't include air conditioning. It's just so unfortunate. But I appreciate that we're all supporting this NDP motion and we will see the work done in regulations.

The Chair: I will call the vote, then. Those in favour of the motion? Opposed? It is carried.

That brings us to government motion 124.

Ms. Smith: I move that subsection 36(2) of the bill be amended by adding the following clause:

"(d.1) defining 'regular nursing staff' for the purposes of subsection 7(3);"

This is just for clarity. We had some questions raised as to whether regular nursing staff meant full time, part time, both or something else, so we want to be able to define that in the legislation.

The Chair: Those in favour? Opposed? Carried.

Government motion 125.

Ms. Smith: I move that clauses 36(2)(f) and (g) of the bill be amended by striking out "clarifying" wherever it appears and substituting in each case "specifying."

Again, this is just for clarity, even though we're specifying.

The Chair: Any lengthy debate? I'll call the vote. Those in favour? Opposed? It is carried.

This moves us to government motion 126.

Ms. Smith: I move that subsection 36(2) of the bill be amended by adding the following clause:

"(g.1) defining 'drug' for the purposes of this part;"

As many of you have noted, I've referred to the fact that we'll be defining "drug" in the regulations, so that's why this is here.

The Chair: I will call the vote. Those in favour? Those opposed? It's carried.

Interjection.

The Chair: No further discussion.

Ms. Smith: I wanted to withdraw it because we need to move it to the back of the bill.

The Chair: It's not carried. What was I saying?

Ms. Smith: Can I have unanimous consent to reopen discussion on clause 36(2)(g.1)?

The Chair: Agreed.

Ms. Smith: Thank you. I withdraw this motion.

The Chair: It is withdrawn.

Ms. Martel: Can I just ask where it's going?

Ms. Smith: We're putting it at the end in the reg-making powers, so that when we define "drug," it applies to the whole act and not just this section.

Ms. Martel: So are we getting a new amendment?

Ms. Smith: Yes.

The Chair: You win motions you didn't even make.

We're still on section 36: PC motion 127.

Mrs. Witmer: I move that subsection 36(2) of the bill be amended by adding the following clauses:

"(i) clarifying, for the purposes of paragraph 4 of subsection 22(1) and paragraph 5 of subsection 23(1), what constitutes improper treatment or care;

"(j) clarifying, for the purposes of paragraph 4 of subsection 22(1) and paragraph 5 of subsection 23(1), what constitutes incompetent treatment or care."

1420

This really is intended to provide clarity in this whole area of regulation-making and specific inclusions. This inclusion is intended to address the fact that the whistle-blowing provisions are much broader than what was set out in the Nursing Homes Act and in order to support the intent of section 22.

There's also a concern that without further clarity, we could see increasing litigation and increasing resident expectations regarding the limits to medical care and health services. So I think that in order to avoid this, we need to clarify exactly what constitutes improper treatment or care or incompetent treatment or care to avoid that increasing litigation and to manage resident care and expectations.

The Chair: Ms. Smith?

Ms. Smith: We note that the term "improper treatment or care" is in the Nursing Homes Act and has never been defined, and we believe that has not been an issue to date. When the inspectors do receive complaints, they usually look at the standards of practice expected of a person by their own college; however, as we know, not everyone is regulated by a college. It would be very difficult to define treatment or care, though, to include any possibility. So we think that allowing the general notion of incompetent treatment or care to stand allows us to deal with it on a case-by-case basis, and we don't see the need to define it.

The Chair: I will call the question. Those in favour? Those opposed? It is lost.

Shall section 36, as amended, carry? Carried.

That moves us now to government motion 128.

Ms. Smith: I move that section 37 of the bill be struck out and the following substituted:

"Application of part

"37(1) This part applies to the admission of a person to a long-term-care home as a resident and any transfer within a home to a specialized unit.

"Transfer

"(2) Where a person is to be transferred to a specialized unit within the long-term-care home, this part applies as though the transfer were an admission of the

person to the home, even if the specialized unit is also a secure unit.

"Definition

"(3) In this section,

"'specialized unit' means any unit designated by or in accordance with the regulations to provide or offer certain types of accommodation, care, services, programs and goods to residents, but does not include a secure unit unless the secure unit is designated as a specialized unit by regulation."

This is in order to allow for the creation of specialized units, as has been recommended in the Casa Verde inquest and others. There's work under way at the ministry level on looking at behavioural or specialized units. This would allow the CCAC to deal with admissions to specialized units even for those inside the home to ensure that we're not put into a situation where, in a centre that has more than one home but only one home with a specialized unit, those residents in that particular home have special access to specialized units while others from outside the home who may need a specialized unit are precluded. So by putting the placement onus at the CCAC level, we allow for everyone in the community and everyone in other homes who need the services of the specialized unit to be placed into that specialized unit.

Ms. Martel: I guess that would be based on as long as there are enough spaces, right? That's going to be the dilemma.

Ms. Smith: Granted, but with the creation of one, we want to ensure that there's fairness as to who has access to it.

The Chair: I will call the question, then. Shall the motion carry? Carried.

Shall section 37, as amended, carry? Carried.

Shall sections 38 and 39 carry? Carried.

That brings us now to NDP motion 129.

Ms. Martel: I move that section 40 of the bill be amended by adding the following paragraph:

"3. The placement coordinator must have determined that the long-term-care home has sufficient staff and an appropriate physical setting to meet the care needs of the person without jeopardizing the care of existing residents."

The current section sets out some criteria that have to be used for a person to be admitted as a resident. This would be a third criterion, to make it really sure that for the resident coming in, there is sufficient staff to meet the needs. That was recommended by the Ontario Nurses' Association.

The Chair: Parliamentary assistant?

Ms. Smith: We do not believe that it's appropriate for the CCAC to be determining whether or not a home has the appropriate physical setting to meet the care needs. There are provisions in the legislation under subsection 42(7) to allow for a home to determine that they do not have the physical structure to accept the resident, and they must provide a detailed explanation of their determination under subsection 42(9). So we do have that mechanism in place, and we do not feel it's appropriate for the CCAC to make that determination.

The Chair: I will call the question. Those in favour? Those opposed? The motion is lost.

Shall section 40 carry? It is carried.

Moving now to section 41, we have PC motion 130.

Mrs. Witmer: I'm going to withdraw that motion in light of discussions past and what I know will be future.

The Chair: Okay. That brings us to government motion 131.

Ms. Smith: I move that paragraph 4 of subsection 41(5) of the bill be amended by striking out "persons" at the end and substituting "individuals."

This is just for clarity, in order to determine that different individuals are making the assessment. "Persons" can be defined to include a corporation, and we wanted to make sure that it was two different individuals.

The Chair: Hearing that, can I call the question? Those in favour? Opposed? It is carried.

That brings us to NDP motion 132.

Ms. Martel: I move that subsection 41(6) of the bill be struck out and the following substituted:

"Assessments, etc. to be taken into account

"(6) In determining whether or not the applicant is eligible for long-term care home admission, the placement coordinator shall take into account all of the assessments and information required under subsection (4) and such other information as the placement coordinator has that is relevant to the determination of eligibility, and if when the assessments and other information used to determine eligibility is presented to the long-term care home the licensee notes a gap in the assessments and other information, then the placement coordinator shall ensure that the information requested by the long-term care home is provided prior to an admission decision being required by the licensee."

This was submitted to us by OANHSS.

Ms. Smith: Again, I think that the required assessments under subsection 41(4) and our motion 141 will go some way to addressing these concerns. In our motion 141, we deal with a change in circumstance of a resident requiring a more up-to-date assessment. So we are, in the legislation as well as in our motion today, requiring that more up-to-date and more fulsome assessments are made, so I don't believe that we're going to have the same situation that we have here. This could put an unreasonable onus on the placement coordinator to provide information that's difficult to access, so we want to make sure that assessments are done in a timely way, are the most up-to-date possible, and are as broad as can be. We think the legislation as it now stands will provide for that.

Ms. Martel: The only point I'd like to make is that, under the circumstances the parliamentary assistant is referring to, you already have a resident in the home. Part of what I was trying to capture here is that an admission would be questioned or even stopped if all of that information hadn't been provided. So I think there's a difference in terms of the assessments and what the requirements are that we're dealing with.

Ms. Smith: I'm sorry, I don't understand your concern.

Ms. Martel: Right now, I'm saying that this information has to be provided from the placement coordinator to the long-term-care home even prior to an admission decision being made, so the resident is still not in the home. Correct me if I'm wrong, but my understanding is that the assessment changes you were making were a reference to a situation where residents were already in the home and assessments were occurring after that.

1430

Ms. Smith: No. Under subsection (4), the assessments are done prior to and have to be done—I'm sorry; I'm just looking for the section—within three months of placement: "The appropriate placement coordinator shall give the licensee of each selected home copies of the assessments ..."—this is subsection (7)—"that were required to have been taken into account, under subsection 41(6)"—so that's in determining whether they should be appropriately placed—"and the licensee shall review the assessments and information and shall approve the applicant's admission ... unless," and we put it in the negative when they're allowed not to accept somebody, so they have to accept somebody except in these limited circumstances. But they are given the copies of the assessment and the information that we refer to in the assessment process, so they're given it prior to making that determination. They are permitted to ask for more information—they are now; they will be in the future. But certainly, the assessments that we're now setting out in the legislation go a long way in addressing some of the concerns that have been raised about lack of information.

The Chair: I will now call for the vote on motion 132. Those in favour of the motion? Those opposed? The motion is lost.

Bringing us to government motion 133.

Ms. Smith: I move that subsection 41(9) of the bill be struck out and the following substituted:

"Review of determination of ineligibility

"(9) The applicant may apply to the appeal board for a review of the determination of ineligibility made by the placement coordinator, and the appeal board shall deal with the appeal in accordance with section 51."

Really, this is just for a matter of clarity. We're cross-referencing the appeal section, 51, that sets out the procedures for appeals.

The Chair: Any debate? I'll call the vote. Those in favour? Opposed? It is carried.

Shall section 41, as amended, carry? That's carried, bringing us to section 42, government motion 134.

Ms. Smith: I move that the definition of "appropriate placement coordinator" in subsection 42(2) of the bill be amended by adding "designated pursuant to subsection 38(1)" after "the placement coordinator."

This is just for drafting clarity and ease of reference in the legislation.

The Chair: I'll call the vote. Those in favour? Opposed? Carried, bringing us to PC motion 135.

Mrs. Witmer: I move that subsection 42(3) of the bill be amended by striking out "selecting" and substituting "applying to."

There is a one-word difference here. It talks about the placement coordinator and it says here that they assist the applicant in selecting a long-term-care home. We're suggesting here that that "selecting" become "applying," because their role normally is to help in the application process. The selection is usually made by the applicant and their loved ones.

The Vice-Chair: Any further debate?

Ms. Smith: Actually, the language, as it now exists, is "selecting," not "applying." We feel that "applying" would be too limited. If someone came in and wanted to apply to a certain home only because that's the only home they've ever heard of, they may not be familiar with other options in their area or that are more culturally sensitive to their needs. We think it's broader to allow for the assistance with selecting, which will ensure that our residents are placed in the most appropriate home available for them.

The Vice-Chair: Further debate?

Mrs. Witmer: I hope that the placement coordinators would put the best interests of the resident and the family first and foremost, although I would have to say, based on some personal experience, in some instances more recently, because we have more people going into long-term-care homes, there has been some concern that some of the assistance that they've received has not led to them being overly happy with the selection that, in some respects, was made on their behalf. These people sometimes can be very easily influenced, and we need to be careful that people do actually get the home of their choice and not what the placement coordinator at the time would think be best. We've got to guard against that.

Ms. Smith: I would just note that in subsection 42(3), "The placement coordinator who determined that the applicant is eligible for long-term-care home admission shall, if the applicant wishes, assist the applicant in selecting...." Then also—this is subsection (4): "In assisting the applicant under subsection (3), the placement coordinator shall consider the applicant's preferences relating to admission, based on ethnic, religious, spiritual, linguistic, familial and cultural factors." So we are including some provisions there.

I would also note that under subsection 41(7), "If the placement coordinator determines that the applicant is eligible for long-term care home admission, the placement coordinator shall, at the time of making the determination, provide information to the applicant about the process for admitting persons into long-term care homes and explain the process, the choices that the applicant has in the process and the implications of those choices." We are trying to go some way to ensure that our residents are informed as best as possible about the process and what options they have in that process to avoid situations that you may be referring to.

The Vice-Chair: Further debate? All in favour of PC motion 135? Opposed? The motion is lost.

PC motion 136.

Mrs. Witmer: I move that subsection 42(5) of the bill be amended by adding "all" after "disclosure of," which would then read, "written consent to the disclosure of"—instead of just "information" now, it would be—"all information necessary to deal with the application."

This request to include the word "all" came from both OANHSS and the Ontario Long Term Care Association.

The Vice-Chair: Further debate? No debate. Motion 136: All in favour? Opposed? The motion passes.

NDP motion 137.

Ms. Martel: It's the same as the one put forward by Ms. Witmer and it has been carried, so I will withdraw mine.

The Vice-Chair: PC motion 138. Ms. Witmer.

Mrs. Witmer: You know what? I will withdraw that. We've dealt with it in some respects. It has been rejected.

The Vice-Chair: Motion 138 withdrawn.

We move to NDP motion 139.

Ms. Martel: I move that subsection 42(7) of the bill be amended by striking out "or" after clause (b) and adding the following clauses:

"(b.1) the applicant's assessed care requirements create a risk for other residents of the long-term-care home;

"(b.2) incomplete assessments and information have been provided by the placement coordinator; or"

This comes in the section of what has to be provided in the process around placement, and was proposed to us by OANHSS.

Ms. Smith: I believe that our government motion 141 will go some way to addressing these concerns by addressing the timeliness or the completeness of the assessments. We are going to be setting out criteria in the regulations for admission to different types of units.

The Vice-Chair: Any further debate? All in favour of NDP motion 139? Opposed? The motion is lost.

NDP motion 140.

Ms. Martel: I move that subsection 42(7) of the bill be struck out and the following substituted:

"Licensee consideration and approval

"(7) The appropriate placement coordinator shall give the licensee of each selected home copies of the assessment results or personal health profile that were required to have been taken into account under subsection 41(6), and the licensee shall review the results or profile and shall approve the applicant's admission to the home unless,

"(a) the home lacks the physical facilities necessary to meet the applicant's care requirements;

"(b) the staff of the home lack the nursing expertise necessary to meet the applicant's care requirements; or

"(c) circumstances exist which are provided for in the regulations as being a ground for withholding approval.

"Full report on request

"(7.1) The appropriate placement coordinator shall give the licensee the complete version of any assessment if requested to do so by the licensee."

1440

This matter was raised with the committee early on by the Ontario Association of Community Care Access Centres when they were talking about information that would have to be provided by the placement coordinator. They referenced the fact that coordinators were using a personal health profile when they were making decisions and that that might be more appropriate than sending all kinds of information to the home. If the home wanted further information, that would certainly be provided for on request, but, in their view, the way the personal health profile had been developed and the way it's currently being used should suffice for important and correct decisions to be made. It's a reflection of what they said to us.

Ms. Smith: Actually, this is in complete contradiction to all the other things you've been saying, because the personal health profile, from my understanding, is a short-form profile and does not provide all the information that homes are looking for. We would have grave concerns with limiting the information to the personal health profile, and as this reads, it could be assessments "or." Most of the homes that we've spoken to, and the operators, the licences want more information, so this limitation to thye personal health profile would not meet their needs.

As well, under (7.1), which you're wanting to add—"The appropriate placement coordinator shall give the licensee the complete version of any assessment if requested to do so"—they have to do that now.

Ms. Martel: They wouldn't if the amendment that I put was in place. I listened to the parliamentary assistant say that in discussions they've had with homes and operators they want to provide more of the information. That's contradictory to what the CCAC association actually told us on the record, which was that they are working with these profiles now. The reason why I moved it was because they, in their submission, were telling us that they were using that with a number of homes now. If that information is incorrect, that's where it came from.

The Vice-Chair: Any further debate?

Ms. Smith: No. Let's just call the vote.

The Vice-Chair: Okay. NDP motion 140: All in favour? Opposed? The motion is lost.

Government motion 141.

Ms. Smith: This is the section that I had been referring to previously.

I move that clause 42(11)(a) of the bill be struck out and the following substituted:

"(a) for each of the assessments required under subsection 41(4), either the assessment or a reassessment was made within the three months preceding the authorization of admission, or within the preceding three months there was a significant change in the person's condition or circumstances, in which case a reassessment was made at that time;"

The Vice-Chair: Any further debate? No further debate. All in favour of government motion 141? Opposed? The motion carries.

NDP motion 142.

Ms. Martel: I move that clause 42(11)(a) of the bill be struck out and the following substituted:

"(a) for each of the assessments required under subsection 41(4), either the assessment or a reassessment was made within three months preceding the authorization of admission; unless the applicant is receiving current treatment from an acute care hospital or a mental health practitioner, in which case the placement coordinator shall access and provide current reassessment information and consult with the long-term care home prior to finalizing the admission."

This came to us from OANHSS.

Ms. Smith: I think the change that we just made through motion 141, where we discuss significant change, is broader and captures what Ms. Martel is including here. As well, I would note that current treatment from an acute care hospital or a mental health practitioner does not encompass those who are in the community and who may have seen their doctor and there may have been a change. We're only looking at hospital care or mental health care here; we would not be seeing any significant change if someone just went to their family doctor. So we think that our provision that we just passed, that includes significant change, encompasses any significant change that a potential resident may have undergone and requires a new assessment.

The Vice-Chair: Any further debate? There's no debate. All in favour of NDP motion 142? Opposed? The motion is lost.

PC motion 143.

Mrs. Witmer: I move that subsection 42(11) of the bill be amended by striking out "and" after clause (c), by adding "and" after clause (d) and by adding the following clause:

"(e) the person or their substitute decision-maker, or both, have signed the admission agreement provided for in the regulations."

This relates to the conditions of authorization of admission. There is no provision currently setting out the contractual obligations of the resident and substitute decision-maker upon admission to a long-term-care home. I think this bill does provide the opportunity for the ministry to address the accountability of residents and their families within the LTC home sector. Apparently, the issues that are of some concern to individuals within the sector are the issues of financial abuse and the mounting, growing bad debt. The bad debt obviously impacts not only those not-for-profits or for-profits who operate the homes, but it also impacts upon the government, which funds the homes. So it does at least allow us to move forward to address some of the bad debt that often is the result of financial abuse by the residents' families.

This particular amendment would clearly set out the obligations of the resident and the family in relation to the admission to a publicly funded LTC home by identifying the limits to government funding and the accountability of the resident for room and board while receiving care in a long-term-care home. The ministry would require the placement coordinator to ensure that the portion of the prescribed admission agreement is signed as a condition of admission to a home. Again, it would address an issue which apparently is growing in some areas.

The Chair: Ms. Smith.

Ms. Smith: We have a motion that is in the pile to deal with bad debt, and we feel that this would be inappropriate because we have no ability to regulate what is in the admission agreement at this time. We would hesitate to enforce the signing of an admission agreement that could include inappropriate sections.

The Chair: Ms. Martel? No. I will call the question. Those in favour of the motion? Opposed? It is lost.

I will now ask—

Ms. Martel: On a point of order, Mr. Chair: I know we're going to vote on section 42 now, right?

The Chair: Section 42; correct.

Ms. Martel: Before we do that, I'd like to ask the parliamentary assistant a question to clarify something. Under section 11—that's the section we've just been dealing with—the coordinator may authorize the admission and then the criteria are set out. It's clause (d) that I'm most interested in, "the person provides consent to being admitted to the home." Are you envisioning that these conditions, particularly (d), take effect as soon as the bill is passed?

Ms. Smith: I don't understand what you're getting at.

Ms. Martel: Let me tell you what I'm getting at. In our community, we have a crisis 1A designation now. I think Kingston is in the same position, and perhaps Windsor. So (d) is completely irrelevant in our community, because it doesn't matter if the person wants to go to that home or not; they have to, under the designation, go to the first available bed in the community. It may well not be the bed or home of their choice. So I'm trying to get clarification about how this works with our community, where we have this specific situation right now.

Ms. Smith: The crisis 1A designation does not preclude them from still staying on the waiting list to go to the home of their choice.

Ms. Martel: But they are not entering the home they want to go to. For example, three weeks out of four, admissions to long-term-care homes are done out of the Sudbury Regional Hospital, not from the community. It's the first available bed, so it has nothing to do with the resident's preference; they go to the first available bed. When they're in that long-term-care bed, in a home that was not their first choice, they can sit on a waiting list to try to get into their home of choice, but their reality right now is that they have no say and they have no ability to consent; they are automatically sent to the first available bed, regardless of where it is in the six homes in our community. So I see a contradiction there in terms of en-

suring that the resident can go to their bed of first choice, when communities like mine have this crisis designation.

1450

Ms. Smith: The consent provisions are presently in the legislation. I understand what you're saying, but in the crisis situations that we've had, we've had to deal with that by placing people in their not first choice until their first choice comes along. I recognize that that's a bit of a contradiction, but this is consistent with what's there now. Certainly we are trying to deal with our crisis situations across the province as best we can.

Ms. Martel: I appreciate that. Maybe I can just add one more thing to this. I know the ministry is aware of this, but this is a particular crisis recently in Kingston and Windsor. For those people who were in the hospital and didn't want to go to the first bed that was open, the hospitals were then trying to apply a fee, which was quite significant. Now, that hasn't happened—

Ms. Smith: It hasn't happened.

Ms. Martel: —as far as I know, in Sudbury yet, but there was certainly that potential in Kingston and Windsor. The second thing I want to know is, what impact, if any, does this provision have on the hospital trying to do that?

Ms. Smith: Again, the Long-Term Care Homes Act does not govern how the hospitals behave or govern themselves. This legislation has no impact on hospital administration. We're trying to ensure that our residents are placed where they want to be placed, if at all possible, and only when we are in a 1A crisis do we supersede that by placing them elsewhere. The hospitals that you talked about have not charged those fees. The ministry has been working closely with those centres in order to try to address the needs and concerns, as we have with Sudbury on the 1A crisis situation over the last months and as we have in Kingston over the last months. Obviously, we've made announcements recently for new beds. That's going to take some time; there's no doubt about it. We're also introduced alternate-level care and interim beds in both of those centres to try to address the issue. We are using the tools we have available to try to address the issues of the residents.

Ms. Martel: I appreciate that. In Sudbury it has been two and a half years now that we've been under the crisis designation, so I'm fair to assume that this provision applies except in the cases where a community is under a crisis 1A designation by the ministry? It applies for other people, but if you're in the situation where the ministry has authorized a crisis 1A designation in your community, then (d) does not really apply, because you don't have a choice.

Ms. Smith: You still have to consent to be placed in that home. It's not your first choice—

Ms. Martel: But they don't even have that luxury, because three weeks out of four the discharges are being made out of the hospital, so they go to the first bed in any home. It doesn't necessarily mean it's their first choice. They could wait for a long time in what is not their first choice on a waiting list to get into what is their first choice. So as I read this, the person provides consent to being admitted to the home. That's not happening. We have people who don't want to provide consent, but that's where they have to go.

The Chair: Legal counsel.

Ms. Fox: This provision is currently in the long-term-care homes legislation. It's continued in the bill. The bill also has the ability in regulation to exempt from provisions of the act. So the issue that you are addressing could be dealt with in the future by regulation to exempt people from provisions of the act. But, currently as worded in Bill 140, it continues what the current law is.

Ms. Martel: I don't want to see a provision for an exemption. I don't want to go there, because I want it to be dealt with.

Ms. Fox: Bill 140 will provide more flexibility in the future to address these kinds of situations with the regulation to exempt.

Ms. Martel: But if I'm correct, the regulation that you are talking about would be a regulation to exempt residents who find themselves in this situation; I'm not encouraging that. What I want to encourage is that people can go to the home of their choice, so—just to make it clear in the public record—I'm not here to encourage a regulation that would exempt Sudbury or other communities who are under this designation from this provision. I have to say that I don't see in the legislation what other provision there is to address this very situation that I'm bringing forward. I appreciate your advice on where else this is going to be resolved.

Ms. Fox: The issue can also be addressed in regulation in the future with respect to waiting list priorities. So in terms of who gets into a bed, even if it is a crisis situation, crisis now applies to people who are in hospital and people who are in the community etc., so there may be availability in the future to draft regulations that are more particular as to who gets the first crisis bed or who gets the second, who's in which waiting category. So priorities can be set by regulation, and we can address some of those issues in the future in the regulations under this new legislation.

Ms. Martel: Can I just ask one final thing? Are the designations that appear now, crisis 1A, and there's a number of them, set by regulation—

Ms. Fox: Yes, they are.

Ms. Martel: —or by policy? So they're set by regulation. That's what's in place, and that's what we have to live with at this point.

Ms. Fox: "Crisis" is the highest category on the waiting list.

Ms. Smith: But we should note that through Bill 140 we are including the concept of choice, which was actually argued against by certain stakeholder groups. Certain stakeholder groups wanted us to just move anyone out of a hospital into the first available bed, no matter if you were an 1A crisis or not. We've certainly not allowed that to happen. We've entrenched the ability to choose, and we've put in these protections. Only in those extreme circumstances, which we're not going to

resolve this afternoon, because they have gone on for some time and there are some systemic issues that we're trying to address as we try to manage the entire system—

The Chair: Okay. I will now ask the question. Shall section 42, as amended, carry? It is carried.

That brings us now to section 43, NDP motion number 144.

Ms. Martel: I move that paragraph 4 of subsection 43(1) of the bill be amended by adding "or the director of nursing and personal care or a registered nurse who is his or her delegate" after "extended class."

This was put forward by OANHSS. I think there's going to be a friendly amendment to this, but I'll table it for now and then we'll work from there.

Ms. Smith: I have a friendly amendment; I hope it's friendly.

I would like to move that paragraph 4 of subsection 30(2), not subsection 43(1)—and I'll explain why in a second—of the bill be amended by adding "or the director of nursing or personal care or a registered nurse" after "extended class".

So we would take out "who is his or her delegate." The reason for that is that in this situation what I think Ms. Martel was looking at was having the director of nursing and personal care or a registered nurse involved in the transfer to a secure unit within a home, not from the community. Subsection 43(1) deals with transfers to a secure unit from the community. Subsection 30(2) deals with transfers within a home, so I think it would be more appropriate for the director of care of that home to be involved in that transfer than to be involved in a community transfer.

The Chair: Your amendment deletes "who is his or her delegate."

Ms. Smith: And changes subsection 30(2) for subsection 43(1).

The Chair: Okay. Any discussion on the amendment?

Ms. Smith: Just to be clear, it's "or the director of nursing and personal care." I think I said "or" but I meant "director of nursing and personal care."

The Chair: There is a problem in that we have already carried section 30, so we would need unanimous consent to reopen section 30. I would ask for unanimous consent for that. Agreed.

We're now dealing not with subsection 43(1) but subsection 30(2). I would ask for any discussion on the amendment. Hearing none, I am calling for a vote on the amendment. Those in favour?

Ms. Smith: That includes our friendly amendment, right? Or have you voted on our friendly—

Ms. Martel: No, that's what we're voting on now.

Ms. Smith: You're voting on my friendly amendment? Okay.

Interjection.

The Chair: This is not an amendment. Those much wiser than me, which includes everyone, have indicated that in fact we are not amending. With the change to a different one, it is in effect a new motion.

1500

Ms. Martel: So you need us to withdraw everything and start with a new motion under—

The Chair: If you would withdraw your motion and then make a motion.

Ms. Martel: I'll withdraw my amendment.

Ms. Smith: I'll withdraw my amendment. But we have unanimous consent to open 30(2)?

The Chair: Right. But now we require a motion.

Ms. Martel: Okay, I think I've got the changes.

I move that paragraph 4 of subsection 30(2) of the bill be amended by adding "or the director of nursing and personal care or a registered nurse" after "extended class."

The Chair: Any discussion on that motion? Hearing none, those in favour? Opposed? It's carried.

Shall section 30, as amended, carry? Carried.

We move next to government motion 144.1. There is no page labelled 144.1. When they were putting together all of these amendments, that little one went and hid on us, so it skipped getting branded. It is, in fact, the following page. It has "2" typed at the top, but it is officially government motion 144.1.

Ms. Smith: I move that section 43 of the bill be amended by adding the following subsection:

"Admission in a crisis

"(2.1) Where a person is admitted to a secure unit pursuant to section 47 of the Health Care Consent Act, 1996, this section applies, even though the person has already been admitted."

The Chair: Discussion? Hearing none, those in favour? Opposed? It is carried.

We move next to NDP motion 145.

Ms. Martel: I move that section 43 of the bill be amended by adding the following subsection:

"Prohibition

"(2.1) If the long-term care home has assessed a secure unit as being required to provide safe care, the placement coordinator shall be prohibited from proceeding with an admission to a non-secure unit."

This was put forward by OANHSS.

The Chair: Discussion?

Ms. Smith: We are creating eligibility criteria in the regulations, and there are provisions that allow the home to refuse admission if the home lacks the physical facilities necessary to meet the person's care requirements or if the staff of the home lacks the nursing expertise necessary to meet the person's care requirements. So we think the concerns that are raised here are already covered off.

Ms. Martel: Can I just ask a question? Are those in section 36 now?

Ms. Smith: Yes. Sorry, they're in—

Ms. Martel: Those provisions that you just outlined are in section 36 now, under the regulation-making section? I'm just trying to get at whether you already have that in 36 or whether that is what you propose to do under 36 as you develop regulations.

Ms. Fox: Subsection 41(2) of the act provides that we can provide for regulations for the criteria for determining eligibility.

Ms. Smith: Subsection 41(2): "The criteria for determining eligibility for long-term care home admission shall be provided for in the regulations."

Ms. Martel: Okay. Given what you've said and that those will be taken into account, I'll withdraw my amendment.

The Chair: Motion 145 is withdrawn.

That brings us to government motion 146.

Ms. Smith: I move that section 43 of the bill be amended by adding the following subsection:

"Alternative delivery

"(2.2) The rights adviser shall give the written notice required by subclause (2)(a)(i) on behalf of the placement coordinator when requested to do so by the placement coordinator, and the giving of the notice by the rights adviser is sufficient compliance with that subclause."

The Chair: Clarification?

Ms. Smith: It's just so we don't have to have two visits. You can go, give the notice and give the rights advice right then and there.

The Chair: I'll call the vote. Those in favour? Opposed? Carried.

Government motion 147.

Ms. Smith: I move that section 43 of the bill be amended by adding the following subsection:

"Rights adviser to notify placement coordinator

"(2.3) The rights adviser shall notify the placement coordinator if the rights adviser is aware that the incapable person intends to make an application to the Consent and Capacity Board referred to in section 46 of the Health Care Consent Act, 1996 or that another person intends to apply to the Consent and Capacity Board to be appointed as the representative to give or refuse consent to the admission on the incapable person's behalf."

What this does is just close the loop, so that if we do have a rights adviser who goes out and gives rights advice, they can report back if the rights advice has been given and what the next step is. So if there is going to be an application before the Consent and Capacity Board or if someone is going to be appointed, at least we know that. It's just to close the loop.

The Chair: Any debate? Hearing none, those in favour? Opposed? The motion is carried.

Government motion 148.

Ms. Smith: I move that subsection 43(3) of the bill be amended by striking out "and" at the end of clause (b), by adding "and" at the end of clause (c) and by adding the following clause:

"(d) of any other matters provided for in the regulations."

This is similar to the previous provision, which would allow us to include in the notice provisions other matters that we determine should be there under regulation.

The Chair: Further debate? Those in favour? Opposed? It is carried.

Government motion 149.

Ms. Smith: I move that subsections 43(4) and (5) of the bill be struck out and the following substituted:

"When requirements must be satisfied

"(4) The requirements under subsection (2) must be satisfied within the three months prior to the person's admission to the secure unit."

This is just rewording to clarify our intent in the admission to the secure unit section.

The Chair: I'll call the vote. Those in favour? Opposed? Carried.

Prior to calling the vote on section 43, we have a notice: The Progressive Conservative Party recommends voting against section 43. Do you wish to speak to it, Mrs. Witmer?

Mrs. Witmer: I'm going to withdraw that motion, based on some of the amendments that have been made.

The Chair: Thank you. Shall section 43, as amended, carry? It is carried.

That brings us to PC motion 151.

Interjection.

The Chair: No, it doesn't. You should have known that I don't know what I'm doing.

Shall sections 44 to 46, inclusive, carry? They are carried.

I'm sorry about that. Now we're at PC motion 151.

Mrs. Witmer: I move that section 47 of the bill be amended by adding "subject to subsection 42(7)" after "is located."

This is the controls on the licensee. It requires linking to subsection 42(7)—which is the information that was transferred to the long-term-care home—for some greater clarity, and it closes the loop by requiring the placement coordinator to disclose all the information before the home signs off.

The Chair: Ms. Smith?

Ms. Smith: I would just note that under subsection (11), "The appropriate placement coordinator may authorize the admission of the applicant to a home only if ... the licensee of the home approves the person's admission to the home...." There can be no placement without the licensee's approval, and the approval comes under subsection (7). So I think that including "subject to subsection 42(7)" in this section is in fact redundant and unnecessary.

Mrs. Witmer: I would withdraw the amendment, based on the clarification.

The Chair: The amendment is withdrawn.

Shall section 47 carry? It is carried.

Moving to section 48, we have PC motion 152.

1510

Mrs. Witmer: I move that section 48 of the bill be struck out and the following substituted:

"Withholding approval

"48.(1) If the licensee believes there is a risk of harm to the health or well-being of residents of a long-term care home or persons who might be admitted as residents, the licensee may withhold approval of the authorized admission and the matter may be referred to the appeal board for resolution.

"Discharge for harm

"(2) If the licensee believes there is a risk of harm to the health or well-being of residents of a long-term care home or persons who have been admitted as residents as the result of the admission of a resident, the licensee may discharge the resident and the matter may be referred to the appeal board for resolution."

Ms. Smith: Under subsection 42(7), a licensee already has the ability to refuse admission if "the home lacks the physical facilities necessary to meet the applicant's care requirements" or "the staff of the home lack the nursing expertise necessary to meet the applicant's care requirements...." We believe that's broad enough for withholding approval and would not want to broaden it any further. With respect to the discharge for harm, there are discharge provisions that are presently dealt with under regulation and we believe that it should continue to be a regulated provision and that we should not be addressing it in legislation.

The Chair: I will call the vote. Those in favour? Those opposed? The motion is lost.

Shall section 48 carry? It is carried.

Shall sections 49 to 52, inclusive, carry? Carried.

That brings us to government motion 153.

Ms. Smith: I move that clause 53(2)(e) of the bill be struck out and the following substituted:

"(e) providing for exemptions from provisions of this part, subject to any conditions that may be set out in the regulations;

"(e.1) modifying the application of this part for emergencies or other special circumstances specified in the regulations."

This just clarifies what we've already included in clause (e).

The Chair: If there's no debate, I will call the vote. Those in favour? Opposed? Carried.

Shall section 53, as amended, carry? Carried.

That moves us to section 54, with PC motion 154.

Mrs. Witmer: I move that subsection 54(1) of the bill be amended by adding "where at least one resident requests that a council be established" at the end.

This really just deals with the fact that in order to establish a residents' council you've to have residents, so there obviously needs to be an interest.

Ms. Smith: Obviously, we feel that residents' councils are important and need to be mandated in the legislation, not just where one person has requested it. We have residents' councils in almost all of our homes now, and we hope to continue.

The Chair: I will call the vote. Those in favour of the motion? Opposed? It is lost.

NDP motion 155.

Ms. Martel: I move that paragraph 2 of subsection 54(2) of the bill be struck out.

I think it's actually 54(2)2. Ralph is going to correct me if I'm wrong. What I was trying to get at is the section that says, "If a resident is mentally incapable, one of his or her substitute decision-makers." I think we heard a number of groups that said that really it should just be residents, period. That's what I was trying to do.

Ms. Smith: Perhaps, Chair, if I could point Ms. Martel to 157 or 156, both Mrs. Witmer and I are proposing that "only residents of the long-term care home may be members of," and Mrs. Witmer's says "its residents' council" and in ours it's "the residents' council." I'm not sure that too much hinges on either of those, but if you want to withdraw yours, we can deal with the other two.

Ms. Martel: Yes, okay.

Ms. Smith: And maybe I could just ask Mrs. Witmer if she cares if it's "its" or "the"?

Mrs. Witmer: No, it doesn't make any difference.

Ms. Smith: Okay, we'd like to take "the," if that's okay. So Mrs. Witmer, if you would withdraw 156.

Mrs. Witmer: I would.

Ms. Smith: Thank you.

The Chair: So 156 is withdrawn.

Ms. Smith: Then I move in motion 157 that subsections 54(2) and (3) of the bill be struck out and the following substituted:

"Only residents

"(2) Only residents of the long-term care home may be members of the residents' council."

The Chair: If there's no discussion, I will call the vote. Those in favour? Opposed? It is carried.

That brings us to NDP motion number 158.

Ms. Martel: I move that subsection 54(3) of the bill be amended by adding the following paragraph:

"3. A person who is employed by the ministry or has a contractual relationship with the minister or with the crown regarding matters for which the minister is responsible."

Ms. Smith: On a point of order, Mr. Chair: We just withdrew subsection (3) in my motion. Sorry; maybe I didn't make that clear. I should have said that when we were just talking about language. So if you want to open up 54(2) and (3) again, I'm open to that, but because we're saying "only residents," we took out everybody else, because it would be pretty hard for someone to work for the ministry and be a resident.

Ms. Martel: Now I see. I only caught the first part of that. I will withdraw mine.

The Chair: That brings us to PC motion number 159.

Mrs. Witmer: And obviously, in light of what we did approve, I would withdraw this.

The Chair: I will now ask the question. Shall section 54, as amended, carry? Carried.

Moving to section 55, we have PC motion number 160.

Mrs. Witmer: I move that paragraph 4 of subsection 55(1) of the bill be amended by adding "in collaboration with the licensee" at the end.

This refers to the fact that obviously anything that is undertaken needs to be done in collaboration with the home.

Ms. Smith: We don't actually agree with this amendment. We think that our residents' councils should be

allowed to be independent. While we note that they have to work within the confines of the home or with the home, we think that putting an onus on them to work in collaboration would somewhat tie their hands. We have heard from the residents' councils association that there were some instances where residents' councils were being curtailed from certain activities by the licensee, including opening their own bank account in which to place the funds that they were raising through their own fundraising. So we would hate for this provision to in any way curtail the activities or enthusiasm of our residents' councils, which we hope are contributing to the quality of life of our residents.

The Chair: I will call the vote. Those in favour of the motion? Opposed? It's lost.

That brings us to government motion number 161.

Ms. Smith: I move that subsection 55(1) of the bill be amended by adding the following paragraph:

"6.1 Provide advice and recommendations to the licensee regarding what the residents would like to see done to improve care or the quality of life in the home."

Again, we heard this from a variety of sources, that this would both be helpful for the home and would empower a residents' council to assist in improving the quality of life in the home.

The Chair: If there's no discussion, I will call the vote. Those in favour? Opposed? Carried.

NDP motion number 162.

Ms. Martel: I move that subsection 55(1) of the bill be amended by adding the following paragraphs:

"10. Advise residents about their rights and responsibilities.

"11. Attempt to resolve disputes between residents.

"12. Provide advice and recommendations to the licensee regarding what residents would like to see done to improve care or quality of life in the home.

"13. Advise the director regarding any concerns that the council has regarding funding and resource allocation in the long-term care home."

I understand that we've dealt with number 12 in the previous amendment, so I'm fine with that, but there are some additional things that I think the residents' council should undertake, and so I've noted those there.

1520

Ms. Smith: I note that 55(1), paragraph 1, now requires the residents' council to advise the residents respecting their rights and obligations under the act, so it's already meeting number 10, responsibilities and obligations. On paragraph 11, we actually heard from residents' councils and family councils who did not want to be involved in dispute resolution. We hope that they will be able to assist in attempting to resolve some disputes between the licensee and the home, but I'm not sure that we want them necessarily getting involved in disputes between residents when it's the residents' council. We've addressed paragraph 12 in our own amendment, and with 13, I would just point to subsection (7). The residents' councils now, as the powers are outlined, have the power to report to the director any concerns or recommendations that in the council's opinion ought to be brought to the director's attention, which would include those that are outlined in Ms. Martel's number 13.

Ms. Martel: Based on that and that paragraph 12 has been accepted as well, and 13 could be covered under subsection (7), I'll withdraw this motion.

The Chair: It is withdrawn.

That brings us to NDP motion number 163.

Ms. Martel: I move that subsection 55(2) of the bill be struck out and the following substituted:

"Duty to respond

"(2) If the residents' council has advised the licensee or the director of concerns or recommendations under paragraph 6 or 7 of subsection (1), the licensee or director, as the case may be, shall respond either in writing or in person within 10 days of receiving the advice, and if the response is provided in person, the response shall be noted in the records of the council."

This was put forward by OANHSS, but if you look at 6 and 7, it specifically talks about concerns or recommendations the council has about the operation of the home, and in 7, reporting to the director about concerns and recommendations that ought to be brought to the director's attention, which, if they're going to do that, I assume would be serious enough. So I think the residents' council deserves to have some kind of response in a timely fashion when it is raising serious concerns about the operation of the home or serious concerns to the director.

Ms. Smith: We do provide for the residents' council to raise their concerns with the director. However, I would note that a licensee has one residents' council to one home, where the licensee may have many homes, but the administrator would be responding to that residents' council, whereas the director would be required to respond within 10 days to 618 homes, which would be completely impractical and impossible. There are complaints procedures. If it's not a concern that they are raising but in fact a complaint, there's the 1-800 number and there are complaints procedures set out in the enforcement and compliance that do have investigations attached to them, and responses. So I would suggest that this duty to respond on the director's part is far too onerous.

Ms. Martel: Can I make two points, Chair? Number one, with respect to the licensee, there isn't any provision at all right now for the licensee to have to respond in any way, shape or form, so I'm concerned about that, if the residents' council takes the time to do that. Secondly, I guess I'm not going to presume that all 600 family councils in the over 600 homes are going to be making a complaint to the director at the same time. I do think that if they make a complaint to the director, if they take that step, which I presume they are going to take seriously when they do it and not for a frivolous matter, there ought to be some kind of written response. I'd be happy to change the days if there is any interest in at least ensuring that the director has to respond.

Ms. Smith: I would just point out, when Ms. Martel said there's no obligation on the licensee to respond, in fact, that's the section that you are now looking to amend.

Ms. Martel: But there is no timeline within that.

Ms. Smith: Yes: "the licensee shall, within 10 days." Oh, maybe that's our amendment that's coming up. Hang on. Why do I have that underlined? No, it's in the proposed bill right now, subsection 55(2): "If the residents' council has advised the licensee of concerns or recommendations under either paragraph 6 or 7 of subsection (1), the licensee shall, within 10 days of receiving the advice, respond to the residents' council in writing."

Ms. Martel: Okay. I apologize, because "the licensee shall," and I think what happened in this amendment was then it had to be both the licensee or the director, because that wasn't included. Whether or not there's any interest in having the director respond in a more formal way, or you just wanted to leave that to the 1-800 line—I just think that if a residents' council takes this step, they are not going to do it for a frivolous matter, and they should get a response.

Ms. Smith: We'll see what we can do from an administrative point of view, but I don't think we want to legislate it.

The Chair: Shall I call the vote on this?

Ms. Martel: Based on what the parliamentary assistant has said, I will withdraw and hope they look at that provision. Thanks.

The Chair: Thank you. I will ask the question. Shall section 55, as amended, carry? It is carried.

Moving us to section 56 is government motion number 164.

Ms. Smith: I move that subsection 56(2) of the bill be struck out and the following substituted:

"Duties

"(2) In carrying out his or her duties, a residents' council assistant shall take instructions from the residents' council, ensure confidentiality where requested and report to the residents' council."

The reason we've provided "ensure confidentiality" is because we heard from residents' councils that they would like that included.

Ms. Martel: Chair, maybe I can speak to this at this time, because the next one would have us voting against the whole section. I think one of the concerns that we heard was that in a number of cases we were talking about staff of the licensee who became the assistant and people's concerns about whether or not that was appropriate. The Registered Nurses' Association of Ontario had put forward an amendment that would have taken that out altogether. That's why I wouldn't really be supporting subsection (2): I think the whole thing should be taken out so that there's no—"attempt" is not the word I'm looking for—opportunity for people to be influenced by a licensee staff member who is attached to the residents' council.

Ms. Smith: I would respond by saying that now that we've limited membership on the residents' councils to just residents, we've empowered them through section 55. We have also, through section 56, given them the ability to accept the assistant that's being given to them, as opposed to assigned. "Every licensee of a long-term care home shall appoint a residents' council assistant who is acceptable to that council to assist the residents' council." So there is an element of accepting that assistant by the council, and in "carrying out his or her duties," we are ensuring that they will respect the wishes of confidentiality, if they are such, by the residents' councils. I think we're putting the protections in place that you're concerned about.

Most of the homes now have their activities coordinator or someone else assigned to the residents' council to assist in, if nothing else, drafting the minutes of their meetings and also liaising with the home to assist with—if in their minutes they're reporting that they don't like the navy beans or something else on the menu, which we heard often, then someone is actually bringing that message back to the administration, if that's what the residents' council asks them to do. I think we have included those protections in the section, and we also are adding further protection by adding this confidentiality component.

Ms. Martel: All right. Given that—because my concern was essentially around feeling intimidated by whomever was there—I withdraw that. Well, no: I will vote for this, and I will withdraw the next one.

The Chair: Right, that's next. Okay. I'm going to call the vote on motion number 164. Those in favour?

Interjections.

The Chair: This committee isn't interfering with your discussion, is it?

Interjections.

The Chair: Okay. Thank you. Those in favour? Those opposed? It is carried.

Motion number 165—

Ms. Martel: Chair, this wasn't a specific amendment, so I guess we just move to the vote.

The Chair: Okay. I will therefore ask the question. Shall section 56, as amended, carry? Carried.

Moving to section 57, NDP motion number 166.

Ms. Martel: I move that subsection 57(1) of the bill be amended by striking out "may" and substituting "shall." I think every long-term-care home should have a family council.

Ms. Smith: Actually, on this one, Ms. Martel and I agree, but I don't think that we can mandate volunteerism or participation by individuals who are not necessarily tied to the home. I mean, these are family members of a resident. We have put "may" and we have put provisions in that family members are reminded on a regular basis of the ability to have a family council. I know of at least one home where I've been told that the families are not interested in having a family council because they can all go in and talk to the administrator on their own, and they do regularly.

Yes, I would love to see them in every home. We have supported the family council project with, I believe,

$240,000 over the last couple of years to assist in developing family councils, a network of them. I know there are some networks that are really taking off and there is a lot of intra-family-council support between homes, so I understand the spirit of it but I don't think we can actually legislate or mandate that we have one.

1530

Ms. Martel: All right. Chair, based on that information, I will withdraw that section.

The Chair: Withdrawn.

That brings us to government motion 167.

Ms. Smith: I move that subsection 57(2) of the bill be amended by striking out "or former resident" wherever it appears.

In this case, we've heard from homes and family councils of their concerns about having people who were not necessarily directly attached to the home being involved, so we're addressing those concerns here.

The Chair: I will call the vote. Those in favour? Opposed? Carried.

PC motion 168.

Mrs. Witmer: This motion is similar to the NDP motion, plus it bears a little bit of resemblance to the government motion in that it does remove the community, so I will withdraw this and support the government amendment.

The Chair: Thank you. That brings us to NDP motion 169.

Ms. Martel: I would agree with Mrs. Witmer so I'll withdraw our motion and look to the government's amendment in this regard.

The Chair: Motion 169 is withdrawn.

Government motion 170.

Ms. Smith: I move that subsection 57(5) of the bill be struck out and the following substituted:

"Right to be a member

"(5) Subject to subsection (6), a family member of a resident or a person of importance to a resident is entitled to be a member of the family council of a long-term care home."

This amendment is here to address some of the concerns that were raised about individuals who'd had no tie to the home being involved in the family council. We wanted to ensure that it was family of a resident or a person of importance. We didn't want to limit it for those who didn't have family but who certainly had people in their lives they wanted involved in the home.

The Chair: Any discussion? Those in favour? Opposed? That's carried.

That brings us to PC motion 171.

Mrs. Witmer: I move that subsection 57(6) of the bill be amended by adding the following paragraph:

"6. Government officials including a person who is employed by the ministry or has a contractual relationship with the minister or with the crown regarding matters for which the minister is responsible."

Basically this deals with who may not be a member of the family council. We're recommending that these individuals be listed as not being eligible as well, because obviously they do have a different accountability.

Ms. Smith: I'd ask that Mrs. Witmer look at our motion 172 and consider our language. Her language would include "government officials"—any government official. That would mean anyone who works for any level of government: federal, provincial, municipal. That would mean anybody who has anything to do with any ministry, not just the Ministry of Health. I believe her language is incredibly broad.

While we're on the topic, we've introduced, in 172, "a person who is employed by the ministry," which would be the Ministry of Health, "or has a contractual relationship with the minister or with the crown regarding matters for which the minister is responsible and who is involved as part of their responsibilities with long-term care home matters."

We wanted to limit it to ministry officials who deal with long-term care because we think that's legitimate, but we don't think that just because someone lives in Oshawa or Kingston and issues OHIP cards they should be limited from participating in their parent's or their loved one's family council.

Mrs. Witmer: Based on that explanation, I am prepared to withdraw my amendment.

The Chair: Thank you. Motion 171 is withdrawn, bringing us to government motion 172.

Ms. Smith: I move that subsection 57(6) of the bill be amended by adding the following paragraphs:

"6. A person who is employed by the ministry or has a contractual relationship with the minister or with the crown regarding matters for which the minister is responsible and who is involved as part of their responsibilities with long-term care home matters.

"7. Any other person provided for in the regulations."

I've already spoken to why.

Ms. Martel: Chair, can I ask a question on this?

The Chair: Yes.

Ms. Martel: Wouldn't you want to limit it to Ministry of Health?

Ms. Smith: "Ministry" is defined in the definition section as Ministry of Health.

Ms. Martel: So it's already clear. Sorry.

The Chair: I'll call the vote. Those in favour? Opposed? It is carried.

That brings us to government motion 173.

Ms. Smith: I move that clause 57(7)(b) of the bill be amended by striking out "quarterly" and substituting "semi-annual".

This is in order to address the concerns that we don't mandate family councils. What we're trying to do is ensure that any family member is aware of the fact that they could have or could establish a family council. While we do acknowledge that perhaps quarterly meetings are a bit excessive, we are amenable to semi-annual meetings.

The Chair: No discussion? I will call the vote. Those in favour? Opposed? It's carried.

That brings us to PC motion 174.

Mrs. Witmer: In light of the previous amendment by the government, I would withdraw this one.

The Chair: That concludes section 57, doesn't it? I will now ask the question. Shall section 57, as amended, carry? It's carried.

Moving to section 58, NDP motion 175.

Ms. Martel: We had this discussion earlier, so I guess I'll withdraw it.

The Chair: You withdraw? Okay. So I will ask, shall section 58 carry? It is carried.

That moves us to section 59, government motion 176.

Ms. Smith: I move that subsection 59(2) of the bill be struck out and the following substituted:

"Duties

"(2) In carrying out his or her duties, a family council assistant shall take instructions from the family council, ensure confidentiality where requested and report to the family council."

This is for the same reasons as we discussed with respect to the residents' council.

The Chair: Any discussion? Those in favour? Opposed? Carried.

That concludes section 59. Ms. Martel, do you wish to speak too?

Ms. Martel: I do, Chair. These concerns were the same as I raised with respect to the residents' council assistant, so I will accept that we're going to do the best we can to make sure that staff respond to the needs and don't intimidate anybody. I won't vote against it.

Ms. Smith: I would just point out that the assistant is accountable to family council again, so that provision is there.

The Chair: Shall section 59, as amended, carry? Carried.

Shall section 60 carry? Carried.

That brings us to section 61, and that is NDP motion 178.

Ms. Martel: I move that the bill be amended by adding the following section

"Rules re councils

"61. The following apply with respect to the residents' council and the family council:

"1. A licensee that is a corporation shall provide them with minutes of the meetings of the board of directors.

"2. The licensee shall provide them with reports on all expenditures made from the relevant funding envelopes, if requested.

"3. The licensee shall provide them with copies of all inspection and compliance reports.

"4. They have the right to meet with the inspector during the course of the annual inspection."

This provision was put forward by the Registered Nurses' Association of Ontario in their brief to us.

The Chair: Ms. Smith?

Ms. Smith: I would just ask Ms. Martel to turn to paragraph 58(1)7. The family council of a long-term-care home has the power to do any of the following: "Review," and I would just point out: "i. inspection reports and summaries received under section 146,

"ii. the detailed allocation, by the licensee, of funding under this act and amounts paid by residents,

"iii. the financial statements relating to the home filed with the director under the regulations...."

I think that addresses some of her concerns with respect to 2 and 3. As well, 4 will be addressed; in motion number 284 we're going to deal with that. I think that a great number of these concerns are already dealt with, so we won't be supporting this motion.

Ms. Martel: Chair, if I might, the right to meet with an inspector was the one I was most concerned about, so if that's coming on somewhere later, then I'll withdraw this amendment at this time.

Ms. Smith: Motion 284.

Ms. Martel: Thanks.

The Chair: That's withdrawn, and I will ask, shall sections 61 to 63 inclusive carry? Carried.

Section 64 brings us to government motion 179.

1540

Ms. Smith: I move that section 64 of the bill be struck out and the following substituted:

"Immunity—council members, assistants

"64. No action or other proceeding shall be commenced against a member of a residents' council or family council or a residents' council assistant or family council assistant for anything done or omitted to be done in good faith in the capacity as a member or an assistant."

This is just to mirror the other immunity provisions in the legislation. It's just a rewording to ensure that we have some consistency in how we're drafting immunity.

The Chair: If there's no discussion, I will call the vote. Those in favour? Opposed? It is carried.

Shall section 64, as amended, carry? Carried.

Shall sections 65 and 66 carry? Carried.

That brings us to section 67 and PC motion 180.

Mrs. Witmer: I move that subsection 67(1) of the bill be struck out and the following substituted:

"Where licensee corporation

"(1) Where a licensee is a corporation, the board of directors of the corporation shall take such measures as the board considers necessary to ensure that the corporation complies with all requirements under this act."

We heard from many of the presenters who were concerned, really, about the language that was used in this part that referred to the duties of directors and officers of a corporation. They believe that changes in language are necessary in order to make it match the language from regulation 965 of the Public Hospitals Act. They were very concerned about the imposition of harsh offence provisions on the directors and officers of long-term-care homes and that they were certainly more harsh than those on directors serving on hospital boards. They believe that this section, combined with section 156, which does not recognize a board's due diligence, and the statutory offence provisions in section 177, substantially increase the duties, responsibilities and liabilities of directors and officers of the corporations operating long-term-care homes. That's from OANHSS. They were concerned that this section makes individual directors and officers

personally liable for ensuring compliance with all the requirements under the act.

The OHA also expressed concern. They feel that there should be consistency with the liability provisions already in other health care legislation. AMO, the Association of Municipalities of Ontario, said this would create unprecedented liability for their councillors. They found it a heavy-handed approach. They said section 67 is a remarkably blunt instrument. They were concerned about the penalties; they were so harsh, went beyond the Public Hospitals Act. We heard from the Catholic Health Association of Ontario and the region of Durham.

I know that the government also has a motion, but there certainly was a tremendous amount of concern regarding this subsection as it is currently worded.

The Chair: Any other discussion?

Ms. Martel: Chair, if I might just add to that, there are three amendments in a row. Mine is the same as Mrs. Witmer's, and it was put forward because it was the language that was used in the Public Hospitals Act. So I agree with what she said.

Ms. Smith: Yes, certainly we've heard the concerns and we've drafted revisions to subsection 67(1), and we've also made substantial revisions to the penalty provisions. Ours is motion 181.

The Chair: Okay, I will call the vote.

Those in favour? Opposed? The motion is lost.

That brings us to government motion 181.

Ms. Smith: I move that subsection 67(1) of the bill be struck out and the following substituted:

"Duties of directors and officers of a corporation

"67(1) Where a licensee is a corporation, every director and every officer of the corporation shall,

"(a) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and

"(b) take such measures as necessary to ensure that the corporation complies with all requirements under this act."

This incorporates language from the Business Corporations Act, which provides for the care, diligence and skill of a reasonably prudent person as well as some of the language from the Public Hospitals Act.

The Chair: Any other debate? I'll call the motion. Those in favour? Opposed? The motion is carried.

That brings us to NDP motion 182.

Ms. Martel: Given the amendments that have already been accepted in this area, I will withdraw my motion.

The Chair: That brings us to PC motion 183.

Mrs. Witmer: I move that section 67 of the bill be amended by adding the following subsection:

"Alternative committee

"(2.1) Nothing in this act prevents the council of a municipality from designating an alternative committee to serve as the board of management or committee of management."

We heard from OANHSS that some municipalities do not operate with a board of management or committee of management but rather designate a standing committee or the municipal council to assume a governance and oversight role for the home. This amendment simply clarifies that municipalities may designate the committee or structure that will act as a board of management for the long-term-care home, so we are putting this forward on their behalf.

The Chair: Discussion?

Ms. Smith: Under subsection 123(3), "The regulations may provide for the composition of a board of management and the qualifications and term of office of its members." As well, under 130(3) we have a similar provision with respect to "the composition of a committee of management and the qualifications and term of office of its members." Presently, we have public members on boards of management of our homes. By allowing a municipality to designate an alternative committee, it would be precluding the public membership that is presently appointed by the province, so we believe that our regulations will allow us to determine the composition and the terms of office of its members, and there will be consultations on those regulations.

The Chair: Ready for a vote? Those in favour of the motion? Opposed? The motion is lost.

Shall section 67, as amended, carry? That is carried.

We move now to a new section, 67.1. We have NDP motion 184.

Ms. Martel: I move that the bill be amended by adding the following section:

"Disclosure of salaries

"67.1 Every executive director of a long-term care home is deemed to be an employee in the public sector for the purposes of the Public Sector Salary Disclosure Act, 1996."

This provision was put forward to us by the Ontario Health Coalition, which said the following: "Currently, salary disclosure legislation applies to homes for the aged. This is unequal. Executive salaries across all long-term-care homes must be made public." The provisions in the salary disclosure act that list when these will be made public include a body that "received funding from the government of Ontario in that year of an amount that is at least equal to" $1 million, or 10% "of the body's gross revenues for the year if that percentage is $120,000 or more."

If we require salary disclosure of homes for the aged and directors of, I think that we should also require that for executive directors of nursing homes, both for-profit and not-for-profit.

Ms. Smith: I'm unaware of any requirement for the salary disclosure of homes for the aged executive directors. I don't believe that's the case. I didn't hear any submissions around the disclosure of salaries. I think the health coalition was very much, at least in their oral submissions, involved in other issues, including staffing standards. I believe that, as drafted, this section could easily be thwarted by using a term other than "executive director," so I won't be supporting this. I don't actually see the rationale for it.

1550

Ms. Martel: A couple of things: The rationale is that if you make a requirement for disclosure by municipal homes for the aged, I think that should be applied to everyone. That was certainly in the written report that we got in our presentation from the Ontario Health Coalition. They did recommend it in their brief. Frankly, we have bodies that are receiving significant public money, and those that do, have folks in charge who also are receiving significant pay for that. I just think it makes sense that when public bodies are receiving public money, if they make over $100,000, that should be disclosed, just like we require in hospitals and colleges and universities etc.

The Chair: I will call the vote. Those in favour of the motion? Opposed? It is lost.

Shall sections 68 to 70, inclusive, carry? They are carried.

Section 71: NDP motion 185.

Ms. Martel: I move that section 71 of the bill be amended by adding the following subsection:

"Health professions

(2) Every licensee of a long-term care home shall ensure that all of the staff of the home who are members of a regulated health profession are assigned their duties in accordance with the standards and guidelines of their profession."

This was a provision that was put to us by the Ontario Nurses' Association.

Ms. Smith: I find it perplexing that the Ontario Nurses' Association would be putting this forward, because the colleges and the regulated health professions acts all provide for what are assigned or acceptable duties for a regulated health professional. If a regulated health professional is concerned about their assigned duties, then they should be reporting that to the college. By placing it in this legislation, it would be creating some conflict with the college. I think it is the responsibility of the college to ensure scope of practice. It's not the job of the licensees, and I don't think it's appropriate to put it in this legislation.

Ms. Martel: I think the issue is that the licensee is requesting people to do things that are not within their scope of practice, so then you get into a problem in the home where the licensee is requiring something that may well go against either the scope of practice or obligations that nurses or, frankly, other health care professionals have under their own colleges. The concern would be, then, in that kind of a situation where the balance is clearly tilted in terms of power—one as an employer and one as an employee—that the licensee also has some obligations to make sure that they are not requiring their staff to do things that otherwise they wouldn't do, either through their scope of practice or because their own college would clearly state that they shouldn't be doing that kind of thing. That was the reason for putting it forward.

The Chair: I will call the question. Those in favour of the motion? Opposed? The motion is lost.

Shall section 71 carry? Carried.

That brings us now to section 72, PC motion 186.

Mrs. Witmer: I move that subsection 72(1) of the bill be amended by striking out "temporary, casual or."

We have a situation here where we do need to ensure that there is continuity of care. I'm not sure what the difference is between temporary and casual. However, I do believe that there is a need for a stable and consistent workforce. I do believe that there's a need for the same staff to be providing care to residents, so I would recommend that we focus on the use of agency staff.

Ms. Smith: If you do believe in the consistency of care and the need for continuity of care, then you would agree that we should be limiting temporary and casual and ensuring that we have more full-time staff in place. That's why that section of the legislation is there: to ensure that we have more full-time staff in place.

Mrs. Witmer: I would wholeheartedly agree with that. However, we're hearing during the hearings about the difficulties that some of the homes are having in finding individuals who want to work within that climate where they feel so overworked and stressed and they don't feel that they are allowed to provide care to residents. The government itself is having difficulty in finding sufficient health care providers; we don't have enough doctors and nurses and some of the other providers. Hospitals are being put in a position where they are hiring individuals who are temporary and casual. But we know that's not the answer. I think we're all moving towards full-time staff who will provide consistent care to residents, but I think we also have to recognize in this day and age that it might not always be possible to find that full-time individual.

Ms. Smith: And all we're saying in this legislation is that the long-term-care home ensure that the use of temporary and casual staff is limited. So I think we stand by our provision.

The Chair: I will call the vote. Those in favour of the motion? Opposed? It is lost.

That brings us to PC motion 187.

Mrs. Witmer: I move that the definition of "agency staff" in subsection 72(2) of the bill be amended by striking out "or other third party."

I think it's really important that this section not impact negatively on the ability of the LTC home to contract with third party providers of key programs and services. Currently, long-term-care homes are not funded for full-time staff in physiotherapy or dietitian positions, and the contract with the third party is the only way that they can provide some of the core services in an efficient and effective manner. Staff who provide pharmacy services, dietary services, laboratory services, physiotherapy or specialized wound care services are all examples of staff who work at the long-term-care home pursuant to a contract between the licensee and other third party, so they need to be excluded from the definition of "agency staff."

I need to draw attention to the fact that, unfortunately, in the health system today, whether it's in the hospitals or whether it's primary care or whether it's in long-term-

care homes, there is a need at times to fill some of these vacancies with agency staff.

Ms. Smith: I believe I understand what Ms. Witmer is saying, but I think we still need a limitation for "other third party," because another third party could be a sister company that's providing staff while not being considered an agency of staffing per se. There have been other structures that have been created that have created a type of agency relationship, although it's a sister company. We would want to address that through this, because that would just be providing extra payment for staff who should be working in the home.

I don't think that the limitation we're putting on here to include "other third party" in any way limits our ability to use staff like physiotherapists and others who are not hired on a full-time basis in a home. What we've said is that we want to ensure that the use of temporary, casual and agency staff is limited. Of course, if you've only got the requirement for 0.5 of a dietitian, then that would fall within the requirements that are there and would not be caught by this provision.

The Chair: I'll call the vote. Those in favour of the motion? Opposed? The motion is lost.

Shall section 72 carry? Carried.

We'll now move to section 73 and government motion 188.

Ms. Smith: I move that subsection 73(3) of the bill be struck out and the following substituted:

"When agency staff is hired

"(3) For the purposes of subsection (1), a staff member who is agency staff, as that term is defined in subsection 72(2), is considered to be hired when he or she first works at the home."

This is to address the cases where there's a lag between the time that an agency is brought on and when they come into the home. We want to ensure that they have the—hang on. I've got to figure out what I'm talking about again. It's getting late in the day.

Sorry. It's just to provide consistency so that we know that it's when they first work, not when they're first engaged through the agency. It's nothing more complicated than that.

1600

The Chair: I call the vote. Those in favour? Opposed? Carried.

We're still on section 73: NDP motion 189.

Ms. Martel: Just a point of order, Chair: I say to the parliamentary assistant, if she wants to give us copies of her cheat sheets, we could follow along with her as we go. It might make it easier.

Ms. Smith: I haven't been reading them; that's the problem.

Ms. Martel: I know.

I move that section 73 of the bill be amended by adding the following subsection:

"Directors and officers

"(4) This section applies with necessary modification to directors and officers of a licensee that is a corporation."

Section 73 lists that every licensee has to undertake screening measures before they hire staff, and those screening measures "shall include criminal reference checks." I suspect there will be other things they'll have to do because it also talks about regulations. I have no trouble with that at all. What I am interested in is how we deal with some operators who are less than scrupulous, in particular with respect to new licences and what kind of checking we're doing to see who's applying for a licence. The provision is to try and get at the situation where we require this to happen with staff, but we have no requirements with respect to any kind of screening when it comes to directors and officers of licensees that are corporations.

Ms. Smith: When we're issuing a licence, we do actually review the potential licensee. As part of that, as you heard earlier today, we looked at some amendments around controlling interests and the definition of "controlling interests," so we do have the ability to look at the history of the corporations and some of their activities. I would love to be a fly on the wall when you appear before AMO and talk to them about the fact that all the councillors who are going to appear on their boards of management are going to have to undergo criminal reference checks.

Ms. Martel: Well, why would it be okay for that to happen to staff in those same municipal homes? This is what your requirement means, doesn't it? I say to the parliamentary assistant, your section 73 says that every long-term-care home—I would assume that's municipal homes for the aged—"shall ensure that screening measures are conducted in accordance with the regulations before hiring staff and accepting volunteers," and in subsection (2), under "Criminal reference checks," that "the screening measures shall include criminal reference checks, unless the person being screened is under 18 years of age."

If I read this section correctly, we're asking every licensee to do that before they hire staff. So if we're making that a requirement because we think this is a serious issue, I'm not sure why we wouldn't have some kind of similar application to those who are involved in the running of homes as well.

Ms. Smith: Normally, the boards of directors of the homes don't have day-to-day involvement with our residents. That's why we put the screening measures in for the staff, who are involved with our residents day to day. We want to ensure their safety and protection, and that's why I've included the screening measures. I don't think that requirement is necessary for directors and officers of a licensee.

Ms. Martel: Can I back up, Chair? The amendment says "directors and officers of a licensee that is a corporation," so I'm not sure that that would actually apply to municipal homes for the aged. I don't know if they're considered corporations. Are they?

Ms. Smith: Municipalities are corporations.

Ms. Martel: Okay. Even in that sense, if they are, I am just a little bit concerned by the discrepancy I see

between what we have around requirements for staff and there being no similar kinds of checks that we should do on people who are involved. So I'll leave it there.

The Chair: I'll call the question. Those in favour of the motion? Opposed? The motion is lost.

Shall section 73, as amended, carry? Carried.

Section 74, PC motion 190.

Mrs. Witmer: I move that subsection 74(1) of the bill be amended by striking out "provide" and substituting "regularly provide."

We did hear some concerns around the training component within the legislation. We need to remember that many of the training requirements set out in section 74 are not new to the long-term-care homes. In fact, the program manual includes 14 requirements for staff orientation and training. However, the ability of staff to put new skills and knowledge into practice is easily compromised when direct care staff only have 10 minutes to get the residents up, bathed, dressed and to the dining room. No matter how much training you prescribe or provide, it's the total hours of care that each resident receives that will contribute most directly to their quality of care. So if training requirements in this bill and those yet to be specified do not come with additional funding, it's going to be beyond the capacity of the home to provide the training or to sustain the knowledge transfer into day-to-day practice and interaction with the residents. OANHSS acknowledged that it was important for the home to have knowledgeable and well-educated staff and volunteers, but they said that the level of expectation outlined in Bill 140 is unworkable and impractical.

The Chair: Ms. Smith?

Ms. Smith: If I could direct Mrs. Witmer to 192, the government will be bringing motion 192, limiting even further those who would require the training provided for in section 74. If you could just take a look at that, you may want to withdraw what you have and go with ours.

Mrs. Witmer: If you've heeded the arguments that were presented, I'm prepared to withdraw this amendment.

The Chair: So it is withdrawn?

Mrs. Witmer: Yes.

The Chair: That moves us to NDP motion 191.

Ms. Martel: I move that subsection 74(1) of the bill be struck out and the following substituted:

"Training

"74(1) Every licensee of a long-term care home shall ensure that all staff, all volunteers and all persons retained by the resident as supplemental privately paid care staff have received training as required by this section."

This came to us as a request by ACE.

The Chair: Ms. Smith?

Ms. Smith: I don't believe that it's appropriate for us to be legislating a relationship between the supplemental privately paid care staff and a licensee. These staff members are hired by individuals. They have a contract between a family or an individual resident. It's not appropriate for us to be dictating any kind of training. However, I would note that the restraint and abuse provisions do apply to those people who are working within the home because it's abuse by anyone, and the restraint provisions limit any use of restraints to those residents in the care of the home. So I don't think it's appropriate for us to be legislating those private providers that have a contract with a resident or a family member because we are not privy to what their contract provides.

Ms. Martel: The only issue I'd raise, then, is that under the current section on training, there is a provision that the long-term-care home's policy promote zero tolerance of abuse and neglect of residents. If you've got someone coming in providing hands-on care, I'm wondering if you wouldn't want to make sure that they have that, since they're coming in to provide direct care in the home and since the licensee still has some requirements about guaranteeing zero tolerance.

Ms. Smith: Yes. The requirement is that the licensee shall protect from abuse, and we are posting those requirements, the notice of zero tolerance. Again, I would argue that while we do have the abuse-by-anyone provision in the home, the relationship between these contractors is between the contractor and the family, and it's not our place to be instituting any kind of training.

The Chair: I'll call the vote. Those in favour of the amendment? Opposed? The amendment is lost.

That brings us to government motion 192.

Ms. Smith: I move that subsection 74(1) of the bill be struck out and the following substituted:

"Training

"74(1) Every licensee of a long-term care home shall ensure that all staff at the home have received training as required by this section."

The Chair: Any other discussion? Those in favour? Opposed? That's carried.

We're still on section 74. NDP motion 193.

1610

Ms. Martel: I move that subsection 74(2) be amended by adding the following paragraph:

"4.1 The protections afforded by section 24."

That is to be included in the list that appears under what has to be provided in terms of training.

Ms. Smith: And that's whistle-blower protection. We support that amendment.

The Chair: I will call the vote. Those in favour of the motion? Opposed? The motion is carried.

That brings us to government motion 194.

Ms. Smith: I move that section 74 of the bill be amended:

(a) by striking out the portion of subsection (2) before paragraph 1 and substituting the following:

"(2) Every licensee shall ensure that no person mentioned in subsection (1) performs their responsibilities before receiving training in the areas mentioned below:"

(b) by adding the following subsection:

"Exception

"(2.1) Subsection (2) does not apply in the case of emergencies or exceptional and unforeseen circumstances, in which case the training set out in subsection

(2) must be provided within one week of when the person begins performing their responsibilities."

This is just for ease of drafting. We've taken out the exception and placed it at the end to avoid any confusion.

The Chair: I will call the vote, then. Those in favour? Opposed? It is carried.

That brings us to government motion 195.

Ms. Smith: I move that paragraph 2 of subsection 74(6) of the bill be struck out and the following substituted:

"2. Mental health issues, including caring for persons with dementia."

We heard from some of our stakeholder groups that "caring for persons with dementia" was not broad enough. They thought we should include "mental health issues," and we're happy to do so.

The Chair: I will call the vote. Those in favour? Opposed? It is carried.

That brings us to NDP motion 196.

Ms. Martel: I move that subsection 74(6) of the bill be amended by adding the following paragraph:

"5.1 Training aimed at achieving the certification level of 'personal support worker.'"

This is in the training section with respect to direct care staff. I think licensees should be doing what they can to ensure that they can provide the training necessary to their staff so that personal support workers are actually achieving that certification level.

The Chair: Ms. Smith?

Ms. Smith: I believe it's inappropriate to be putting the certification level for "personal support worker" in quotes in the legislation. I think under clause 71(b), we have reg-making authority to set out qualifications for different staff. Right now, as far as I know, there are three different levels for personal support workers, three different types of qualifications. I think it would be better set out in regulation what exactly we require for our staff. Again, I just note that earlier today we were discussing the fact that "personal support worker" wasn't a term used in 1993; it was "health care aide." Now we do call them personal support workers, but five years from now we may be calling them something different. So I think the qualifications in regulations give us more flexibility and give us the ability to address what qualifications we want.

Ms. Martel: Can I just add this? It was clear during the course of the hearings that personal support workers are providing more and more hands-on care, so the attempt was to ensure that we can move to the highest qualifications or provide for the highest level of training possible, given the increased direct care to residents that folks are providing. So if the parliamentary assistant and the government want to take a look at that under the qualifications in the regs, I'll be happy with that, and I'll withdraw the amendment.

The Chair: Motion 196 is withdrawn, moving us to NDP motion 197.

Ms. Martel: I move that section 74 of the bill be amended by adding the following subsection:

"Ministry to incur costs

"(7) The ministry is responsible for any costs incurred by the licensee for training under subsection (6)."

The Chair: The amendment is out of order, bringing us to PC motion 198.

Mrs. Witmer: I will be withdrawing that motion.

The Chair: I will now ask the question. Shall section 74, as amended, carry? It is carried.

We now have a new section 74.1, PC motion 199.

Mrs. Witmer: I move that the bill be amended by adding the following section:

"Teaching arrangements

"74.1 The minister shall provide for formal agreements between long-term care homes and universities and community colleges to jointly provide financial support for the training of health care practitioners in the care of the elderly, and the Ministry of Health and Long-Term Care shall provide financial support to enable some long-term care homes to participate in these teaching arrangements through a funding formula outside the formula for resident care."

The Chair: I see you've provided guidance for me on this motion.

Mrs. Witmer: I did.

The Chair: I have to rule it out of order. Thank you.

Government motion number 200.

Ms. Smith: I move that the bill be amended by adding the following section:

"Training for volunteers

"74.1 Every licensee of a long-term care home shall develop an orientation for volunteers that includes information on,

"(a) the residents' bill of rights;

"(b) the long-term care home's mission statement;

"(c) the long-term care home's policy to promote zero tolerance of abuse and neglect of residents;

"(d) the duty under section 22 to make mandatory reports;

"(e) fire safety and universal infection control practices; and

"(f) any other areas provided for in the regulations."

We've moved away from an intensive training for volunteers to more of an orientation for volunteers. I understand that Ms. Martel may have a couple of friendly amendments to this one. What we've tried to do is ensure that there is less paperwork but that our volunteers are receiving the orientation they need with respect to the bill of rights, the mission statement, the zero tolerance for abuse and neglect and their duties to report.

Ms. Martel: I'm just trying to think of what those were again, but I think I've got it.

Ms. Smith: There's two of them.

Ms. Martel: I move a friendly amendment that would have the word "training" for volunteers replaced by the word "orientation" and a new clause (g) at the very bottom that would say "the protections under section 24," or those "by" section 24—sorry. I'm not sure which word I'm supposed to use there.

Ms. Smith: "The protections afforded by section 24" was the one you put in motion 193.

Ms. Martel: So let me just confirm, then, Chair, that "training" would be replaced by "orientation" in the title, and a new clause (g) would read, "the protections afforded by section 24."

The Chair: On line (e), the "and" is moved down to line (f).

So we will now debate the amendment to the amendment.

Ms. Smith: Call the question.

Ms. Martel: I have no comments.

The Chair: Shall the amendment to the amendment carry? Carried.

Now, shall new section 74.1 carry? Carried.

Section 75: Before I call for a vote on it, in the order they are in here, is Mrs. Witmer.

Mrs. Witmer: In motion 201, I recommend voting against it. We heard from the long-term-care association, OANHSS, and others that in some respects section 75 was impractical and it did not actually achieve its objective. Motion 202 was basically the same thing.

Ms. Smith: Yes, 202 is the same. We will be accepting this and voting against it.

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The Chair: I will therefore ask the question. Shall section 75 carry? Those in favour? Those opposed? The section is lost.

That brings us to PC motion number 203.

Mrs. Witmer: I move that clause 76(1)(d) of the bill be amended by striking out "revisions" and substituting "material revisions."

We heard a lot about more paperwork and micromanagement, and there's no indication here, by including simply the word "revisions," whether you change a sentence or whether you change a whole section of the admission package, that it must be communicated to a current resident who did receive the first package. If you're going to have to redo all of the material, it could be costly and in some respects it could be unnecessary. There's no definition currently of what would be expected when change is necessary.

Ms. Martel: I agree with both 203 and 204, because they are the same.

Ms. Smith: Exactly. We're all in agreement.

Ms. Martel: We're in agreement, so that's great.

The Chair: The debate should not be prolonged on this one.

Mrs. Witmer: No, because we're all saying the same thing.

The Chair: I would therefore call the vote on 203. Those in favour? Opposed? Carried.

Ms. Smith: I withdraw 204.

The Chair: Motion number 204 is withdrawn, to no one's surprise, bringing us to government motion number 205.

Ms. Smith: I move that clause 76(2)(g) of the bill be struck out and the following substituted:

"(g) notification of the long-term care home's policy to minimize the restraining of residents and how a copy of the policy can be obtained."

Again, in our attempts to limit the paperwork, we determined, and our intention had been, that we give notice of the long-term-care home's policy to minimize the restraining of residents, but that the entire policy need not be included in the content. But we do provide in that information package how they can obtain a copy of that policy.

The Chair: Any discussion? I call the vote. Those in favour? Opposed? It is carried.

Government motion number 206.

Ms. Smith: I move that subsection 76(2) of the bill be amended by striking out "and" at the end of clause (p) and by adding the following clause:

"(p.1) an explanation of the protections afforded by section 24; and"

This is again to address Ms. Martel's concerns about including whistle-blower protection information when we are providing information about the positive duty to report.

The Chair: If there's no debate, those in favour of the motion? Opposed? It is carried.

NDP motion number 207.

Ms. Martel: Chair, hang on, because I'm not sure if that has now been dealt with by the addition of "material" revisions or not. Sorry.

I think what I was trying to do in this section was to ensure that revisions didn't have to be handed out to everybody again, but changes could just be posted, to try to—did yours do that? I'm sorry, Monique.

Ms. Smith: It's okay. We've limited it to the requirement that they only have to give material changes, so it will limit it right down. I'm not sure that we have to—what you'd then be saying is that we have to post any revisions.

Ms. Martel: Okay. Is "material" defined somewhere, or is that going to be done in regulation?

Ms. Smith: I think it's kind of common parlance, "material." I'm sure there's a judge somewhere who has determined what "material" is.

Ms. Martel: I'm not actually trying to be facetious. I'm trying to sort out who is going to make the decision, then, about what is material—is the director doing that; is the ministry doing that?—so that you don't have to send everything out. That's all.

Ms. Smith: The licensee would determine what they see as material, and if there's a challenge to that, that a change was made that wasn't provided, then a residents' council, anyone, could make the complaint, "There was a material change and we didn't get a notice of the change." Then it would be determined by the director through the complaints process.

Ms. Martel: But it's each individual licensee that makes that initial determination now?

Ms. Smith: Yes. We're putting the requirement on them that material changes be made available.

Ms. Martel: Okay, then, where am I? What I should do, then, is probably withdraw that amendment, I would think. Yes, that's what I'll do, Chair.

The Chair: So you're withdrawing it?

Ms. Martel: My apologies to everybody.

The Chair: I will now ask, shall section 76, as amended, carry? It is carried.

That brings us to PC motion number 208.

Mrs. Witmer: I move that subsection 77(3) of the bill be struck out and the following substituted:

"Required information

"(3) The required information for the purposes of subsections (1) and (2) is to be determined by the residents' council and the family council, if any, for the home."

Ms. Smith: I believe that the audience for the posting of information is much broader than the residents' council and family council. They, in fact, in a lot of homes have their own boards. This is to provide generation information. With the elimination of section 75—the one we all agreed to eliminate—I think we do need posted information with respect to the residents' bill of rights, the mission statement, the zero tolerance for abuse and neglect and the other things listed in this section. We have in fact made efforts to reduce the paperwork by reducing the requirement on those who need to be trained or given information. We feel that it is imperative that we post the information, and that's why we would not be supporting the amendment proposed by Mrs. Witmer.

The Chair: Further debate? If there's none, I will call the vote.

Those in favour of the motion? Those opposed? It is lost.

Government motion number 209.

Ms. Smith: I move that clause 77(3)(g) of the bill be struck out and the following substituted:

"(g) notification of the long-term care home's policy to minimize the restraining of residents, and how a copy of the policy can be obtained;"

Again, the same rationale as for the last change.

The Chair: Any discussion?

Those in favour? Those opposed? It is carried.

PC motion number 210.

Mrs. Witmer: I move that clause 77(3)(k) of the bill be struck out and the following substituted:

"(k) copies of the inspection reports for the long-term care home for the current calendar year, the home's plan and the ministry's response to this plan of action, any orders made by an inspector or director and the status of the results of any appeals;"

Ms. Smith: I would ask Mrs. Witmer to take a look at 211, where we are attempting to streamline and also address some of the concerns. We are including copies of the inspection reports for the last two years, so it's a little bit broader than you have. We also include:

"orders made by an inspector or the director with respect to the ... home ... that have been made in the last two years;

"decisions of the appeal board or Divisional Court that were made ...

"the most recent minutes of the residents' council meetings, with the consent of the residents' council;

"the most recent minutes of the family council meetings ...

"an explanation of the protections afforded under section 24."

We think that these are the important requirements that should be listed, and we think that Mrs. Witmer's clause is too restricted. Also, there's nothing precluding the home from posting its plan if it chooses to do so.

The Chair: Further discussion? I will call for a vote.

Those in favour of the motion? Opposed? It is lost.

That brings us to government motion number 211.

Ms. Smith: I move that clauses 77(3)(k), (l) and (m) of the bill be struck out and the following substituted:

"(k) copies of the inspection reports from the past two years for the long-term care home;

"(k.1) orders made by an inspector or the director with respect to the long-term care home that are in effect or that have been made in the last two years;

"(k.2) decisions of the appeal board or Divisional Court that were made under this act with respect to the long-term care home within the past two years;

"(l) the most recent minutes of the residents' council meetings, with the consent of the residents' council;

"(m) the most recent minutes of the family council meetings, if any, with the consent of the family council;

"(m.1) an explanation of the protections afforded under section 24; and"

The Chair: Any debate?

Ms. Smith: I already gave my rationale.

The Chair: I will call for the vote. Those in favour? Opposed? It is carried.

I will now ask, shall section 77, as amended, carry? It is carried.

I believe it is probably appropriate, it being now 4:30, to adjourn until tomorrow at 9. I have been very impressed with the committee today. I looked at the type of people around here, and I think we're probably all future presidents of a residents' council somewhere. We will get the benefits of this debate.

The committee is adjourned until 9 o'clock tomorrow.

The committee adjourned at 1630.

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