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Mercredi 31 janvier 2007

Standing committee on social policy

Comité permanent de la politique sociale

Long-Term Care Homes Act, 2007

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

Wednesday 31 January 2007

Mercredi 31 janvier 2007

The committee met at 0904 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. Welcome to the second day of clause-by-clause of the standing committee on social policy.

I believe we're now on section 78, motion 212, submitted by the NDP.

Ms. Shelley Martel (Nickel Belt): I move that clause 78(1)(b) of the bill be struck out and the following substituted:

"(b) the regulated document has been approved by the ministry."

This was suggested to us by the Advocacy Centre for the Elderly. I myself am not sure what a regulated document is, and I didn't see a definition in the introduction. However, instead of having the compliance certified by a lawyer, my suggestion is that the document or documents have the approval by the ministry and then it can be common across all long-term-care homes. So that was the reason for the submission.

The Vice-Chair: Any further debate?

Ms. Monique M. Smith (Nipissing): We did hear some feedback on the regulated documents. Certainly, some of the homes do not want to have certification by a lawyer. However, it does give them the flexibility to develop their own documents, but we have the assurance that it complies with the legislation. To have regulated documents—which are defined, actually, in the regulations; there is a provision for that. Let me try to tell you which one. But to have those certified by the ministry would, I think, be considered very prescriptive by our operators.

Ms. Martel: Can I just ask what kind of documents we're talking about and why they would need to be certified by a lawyer? I don't have a clear sense of what—some kind of agreement when you're entering a home?

Ms. Smith: The regulated documents will be defined in the regulations, and we haven't determined which ones, but it would be like the admissions agreement and the different types of documents that residents are required to sign on the way in. We want to ensure that they comply with this legislation and with all other legislation. We have heard of certain circumstances, particularly from ACE, where homes are requiring DNRs to be signed upon admission. We don't think that's appropriate, and people aren't being given the proper time or advice to determine what directives they want to give. So we want to ensure that there is no coercion, and that any document they're signing is actually in compliance with our legislation and any other.

Ms. Martel: Okay. Two things: It was ACE that put forward the recommendation that I am putting forward now; secondly, I want to be clear—every time there is a new admission in a home, that particular form has to be certified by a lawyer every time, or are you talking about a form that's used all the time that has been certified so—

Ms. Smith: A form, yes. What we actually foresee is that the associations would take on that role; once we determine which forms are to be regulated, that broad forms can be developed for the homes by either their association or, if it's a chain, by the chain once they're certified by a lawyer, to comply—

Ms. Martel: And it can be used.

Ms. Smith: It's not every one; it's a template.

Ms. Martel: Okay, thank you. Based on that, Chair, I'll withdraw that motion.

The Chair (Mr. Ernie Parsons): That brings us to PC motion 213.

Mrs. Elizabeth Witmer (Kitchener–Waterloo): I move that clause 78(1)(b) of the bill be struck out.

It's the same one. It was to eliminate "the compliance has been certified by a lawyer," but I think, if I hear the parliamentary assistant correctly, it isn't each time that a resident would be admitted to a home; it's once that the documents would have to be certified for each home. Is that right?

Ms. Smith: If their template is certified by a lawyer and the template is what they're having a resident sign, then that's fine. If they go off the template, then obviously they've modified it and that particular edition has not been certified by a lawyer. But, yes, our view would be that either the home itself, the associations, the chain, whoever, would come up with some standardized forms. Veering from that would, of course, nullify the certification of the lawyer, but using the template would be fine.

Mrs. Witmer: Now, if there were deviation, who would be picking up that cost for the lawyer—the resident or the home?

Ms. Smith: I suppose it would come down to who was requiring the deviation.

Mrs. Witmer: Okay.

Ms. Smith: I don't think we're in a position to make that determination from here. I mean, if a home wants to start changing from the form that it's presenting to the family, then it would be, I think, the home. If it were a family demanding that a change be made and the home wanted to ensure that it was in compliance with this section, it would be up to the home to determine how they wanted to negotiate that.

Mrs. Witmer: So it could be possible, if there were a demand from the resident and the family for some sort of a change, that the family could be required to pay this additional cost to a lawyer.

Ms. Smith: I think it's a pretty remote possibility. Right now we don't even have the ability to regulate our forms, and our concern is that families are being required to sign things that are inappropriate. That's why this is here. I think your suggestion would be pretty remote.

Mrs. Witmer: Okay. Obviously, we don't want a lot more red tape, and we want to be careful as to what additional costs might be incurred for either side, probably. So I'll withdraw that amendment, then.

0910

The Chair: Motion 213 is withdrawn, so I will now ask, shall section 78 carry? Carried.

Government motion 214.

Ms. Smith: I move that section 79 of the bill be amended by adding the following subsection:

"Preferred accommodation

"(3) Subsection (1) does not apply to an agreement under paragraph 2 of subsection 89(1) except as provided for in the regulations."

This additional reg-making power is to enable the ministry to specify that an agreement between a licensee and a resident to pay the preferred rate is not voidable for a certain period of time.

This is to address some of the concern we heard where someone would sign an agreement to go into preferred and then, because we allow 10 days to void an agreement, they would go in and then void their agreement. So they would kind of queue jump by accepting a preferred bed. This will ensure that if you are accepting a preferred bed, that agreement isn't voidable within 10 days but in fact for a certain period of time—and we're looking at probably a year—to ensure that we don't have that kind of game-playing around waiting lists and getting into homes.

The Chair: Any discussion? Hearing none, I will call the vote. Those in favour? Opposed? It is carried.

I will now ask the question. Shall section 79, as amended, carry? It is carried.

Next I will ask, shall section 80 carry? It is carried, bringing us to section 81, PC motion 215.

Mrs. Witmer: I would withdraw this motion since another motion that we had introduced was not accepted.

The Chair: That's withdrawn.

I will now ask, shall section 81 carry? Carried.

Now moving to section 82, government motion 216.

Ms. Smith: I move that section 82 of the bill be struck out and the following substituted:

"Continuous quality improvement

"82. Every licensee of a long-term care home shall develop and implement a quality improvement and utilization review system that monitors, analyzes, evaluates and improves the quality of the accommodation, care, services, programs and goods provided to residents of the long-term care home."

This is in order to address some of the concerns that were raised by OANHSS and the OMA, both seeking to entrench in the legislation continuous quality improvement. We had "quality management system" but I understand that "continuous quality improvement" is more the state-of-the-art wording, so we wanted to make sure that was addressed here.

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

Now I will ask, shall section 82, as amended, carry? It is carried.

Moving to section 83, we have PC motion 217.

Mrs. Witmer: I move that subsection 83(1) of the bill be amended by adding "who are capable" after "residents."

This is referring to the satisfaction survey. It says every licensee "shall ensure that, at least once in every year, a survey is taken of the residents and their families." Obviously, all of the families are going to be able to fill out the survey. However, in the case of residents, this acknowledges that all residents might not be able to participate in the survey, so it just defines those who are capable.

Ms. Smith: We did look at this very closely, and we're concerned about that particular notion. However, I would just point out to Mrs. Witmer that in our homes—well, depending on whom you listen to—about 60% suffer from dementia and, as you know, dementia can vary with different people. Even though they might be deemed to be legally incapable, some of them can still comment on the food, their accommodation and their home setting. We wanted to keep it as broad as possible so that all residents were given the opportunity to respond and so that we weren't precluding those who may be deemed incapable from actually having their say. So we won't be supporting your motion, although I do recognize why you've introduced it.

Mrs. Witmer: What penalties would there be for an operator who obviously was not able to ensure that all the residents were able to fill out the survey? You yourself have acknowledged that there are those who suffer from dementia. I think statistics are indicating to us that the number of those individuals continues to increase. Are there penalties? This is pretty clear. It does say "of the residents," so what about the residents who can't?

Ms. Smith: It doesn't say "of every resident." It says the actual obligation is to ensure that "a survey is taken of the residents and their families." So as long as they've taken the survey and they can show that they've provided it to the residents—you can't force people to respond—one way or the other, incapable or not. I would suggest that as long as they've taken the survey, given it to the residents and families, made every good effort to get it out there and collect it, they will have met the obligation.

Mrs. Witmer: I will withdraw that motion, with that clarification.

Ms. Martel: Can I just ask a question on that? I recognize that in many families it is the family member who is the substitute decision-maker, but sometimes it isn't. Are they going to be permitted to respond to the survey if the resident is not quite capable themselves? Is that opportunity being afforded when you talk about either residents or families?

Ms. Smith: The survey is of both. You don't have to be a substitute decision-maker. As a family member, you'll be able to respond.

Ms. Martel: But if you've got a resident who doesn't have a family member, who has a substitute decision-maker, the likelihood of them clearly understanding the survey is not so likely, so can the substitute decision-maker do the survey in their place? Is that a possibility or do you want that to happen?

Ms. Smith: Yes. If the substitute decision-maker is standing in the place of the resident, there's nothing that would preclude them from doing that.

Ms. Martel: But by law, just by saying "resident"—

Ms. Smith: "Resident" includes substitute decision-maker. That's understood.

Ms. Martel: In law, all the time? That's clearly required.

Ms. Smith: You'll note that we didn't put "or substitute decision-maker" in a whole lot of places, because that's kind of understood.

Ms. Martel: That's implied. Okay.

The Chair: So the motion is withdrawn?

Mrs. Witmer: Yes.

The Chair: Moving then to NDP motion 218.

Ms. Martel: I move that subsection 83(4) of the bill be amended by adding the following clause:

"(a.1) the results of the survey are made available to the union representatives of the workers, or the employee co-chair of the health and safety committee"

The Ontario Nurses' Association made this recommendation. The reason for it was to ensure that if there are issues around how care is being provided, they and their workers know if there is something that they need to be doing so that family members and residents are happier with what is being provided. It allows them the opportunity to know what the problem is and to try to resolve it.

Ms. Smith: We don't see the need for this. The satisfaction survey is to look at the operations of the home. If there are improvements that need to be made, the home will be discussing that with their staff, so they would be receiving the information indirectly, if not directly.

The Chair: Any other discussion?

Ms. Martel: I guess I don't understand what the problem is. You'll have a survey, you'll have results. The operation of the home, frankly, for the most part, is quite dependent on who is delivering the service and how it's being delivered. I just would think that the front-line staff or their representative would be able to have access to it to know what is being requested, to know if what the licensee is requesting is actually responding to the concerns that were raised. I didn't think it was a big problem. I'll leave it. I mean, I'm not going to withdraw it.

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

Government motion 219.

Ms. Smith: I move that clause 83(4)(d) of the bill be struck out and the following substituted:

"(d) the documentation required by clauses (a) and (b) is kept in the long-term care home and is made available during an inspection under part IX."

Again, this is addressing some of the concerns around paperwork. As opposed to having to send the documents to the director, we are now stating that they would be kept and reviewed as part of the inspection.

The Chair: Any discussion?

Ms. Smith: Sorry. This is the documentation around the satisfaction survey.

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

We're still on section 83, PC motion number 220.

0920

Mrs. Witmer: I move that section 83 of the bill be amended by adding the following subsection:

"Results to health quality council

"(5) The director shall provide annually the results of the survey required by clause (4)(a) to the Ontario Health Quality Council for inclusion in its annual report to the minister."

Really, the introduction of this subsection is to ensure that there is accountability to the public and also that there is increased transparency since the Ontario Health Quality Council, of course, does do an annual survey and does make a report to the minister and to the public.

The Chair: Ms. Smith.

Ms. Smith: Each home will be doing its own survey. It's not determined that the satisfaction survey would be a regulated document, so there may not be consistency in all of our surveys. As well, given that we just passed the previous motion, the homes will no longer be required to send them to the director but in fact will only have to have them on hand to show to an inspector. There's no real mechanism for amalgamating all of the satisfaction surveys, so logistically it would be very difficult to try to achieve this.

The Chair: Any more discussion? I'll call the vote. All those in favour of the motion? Those opposed? The motion is lost, bringing us to PC motion number 221.

Mrs. Witmer: I move that section 83 of the bill be amended by adding the following subsection:

"Satisfaction survey

"(6) The ministry shall implement a ... province-wide third party satisfaction survey of residents and families and include the results in the annual report of the Ontario Health Quality Council."

This does refer to a new survey that would be introduced. Again, it's an attempt to introduce some—

The Chair: Before you speak to it at length—

Mrs. Witmer: Do you want to rule it out of order?

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

Ms. Smith: Although you did drop that one word. Nice try.

The Chair: I appreciate your "call" perception providing those speaking notes. I'm sorry.

Mrs. Witmer: That's okay.

The Chair: Shall section 83, as amended, carry? It is carried.

This brings us to section 84, PC motion 222.

Mrs. Witmer: I move that subsection 84(2) of the bill be struck out and the following substituted:

"Requirements of program

"(2) The infection prevention and control program must follow the directives and guidelines established by the ministry's public health and chief medical officer of health division."

This recommendation came from both OANHSS and OLTCA, who both had some concerns. The requirement does not reflect current best practices as set out by the province's provincial infectious diseases advisory council and contained in directives and guidelines intended for the prevention and control of infectious diseases in LTC homes, so this is recommended to be substituted.

Ms. Smith: I would differ with the opinion of the OLTCA. In fact, I've gone back to our infectious diseases branch, or my gang has, and we've confirmed that section 84 as it's written is the guideline. In order to accept your amendment, we would have to do substantial changes to address who is actually setting out the guidelines.

I would just note that the guide to the control of respiratory infection outbreaks in long-term-care homes, which is the directive from the infectious diseases branch, public health division, states: "Daily surveillance is the most effective way to detect respiratory infections. There are two methods to conduct daily surveillance: active and passive."

Sullivan continues to detail paths of active surveillance activities. Under "passive surveillance" there is a statement, "Passive surveillance involves looking for infections while providing routine daily care or activities." So that's what you'll find kind of reworded in section 84. We confirmed again last night that section 84 is the appropriate public health directive for infection control and that active and passive surveillance is part of the guidelines.

Mrs. Witmer: I heard the parliamentary assistant make reference only to the OLTCA, but I did indicate that this was a concern of OANHSS as well. They have indicated that they did also believe that the wording in the draft act doesn't reconcile with good practice in infection prevention and control nor support health transformation and system collaboration. I just want to stress that the concerns did go beyond and did include both, but I appreciate the explanation that's been given by the parliamentary assistant.

Ms. Martel: I understand there would be a guideline that's similar that homes are to operate by. What happens in the circumstance where you have a specific or more particular outbreak in a home in a particular area? The next recommendation, which was mine, actually referenced local public health authorities to capture that. Is it that you have a guideline that everybody follows generally for daily surveillance? Then, if there's a specific outbreak, what happens next?

Ms. Smith: This is just for the infection prevention and control program for the home, so this is what the homes are required to do day to day. Obviously, if public health issues a directive, then that doesn't supersede this but it is in addition to the daily maintenance and daily monitoring of infection and disease. We would have a directive from public health or from the ministry's infectious disease branch advising of further action that needs to be taken, and the homes would be required to do that. This doesn't preclude that, obviously. This is, day to day, what we expect a home to do on infection control.

Ms. Martel: Okay.

The Chair: I will call the vote. Those in favour of the motion? Those opposed? The motion is lost, bringing us to NDP motion 223.

Ms. Martel: I move that subsection 84(2) of the bill be struck out and the following substituted:

"Directions and guidelines

"(2) The infection prevention and control program shall follow the directions and guidelines established by the chief medical officer of health and local public health authorities."

I've listened to what the parliamentary assistant says, but I'm looking at that particular section, and what I don't see is where the trigger is for local public health authorities to assume control in the event of an outbreak. I'd just like some clarification around that. The measures that I see here would be daily ones, ongoing. I'm kind of interested in what happens in an—I don't want to use the word "emergency," but in an outbreak situation. Are there ministry guidelines around that? Is it implicit in what is here that the local public medical officer of health takes over and their guidelines supersede any ministry guidelines? Do you know what I mean?

Ms. Smith: We do have under section 85 emergency plans. Homes are required to develop emergency plans that comply with the regulations and include "measures for dealing with emergencies" and "procedures for evacuating and relocating the residents," so there is a requirement for them to develop their emergency plans in conjunction with the regulations. I am assuming that the regulations would require them to follow any guidelines

that were issued by public health, but let me just confirm that.

Ms. Martel: Yes. I understand emergency, but I'm not really referencing having to move people out of the home.

Ms. Smith: I am advised by counsel that public health legislation would supersede, and that's kind of a given. We don't need to address it in our legislation because that is the function of the public health legislation.

Ms. Martel: Okay. It was actually more my concern what would happen at the local level in an outbreak, and if other legislation supersedes, then I'm fine with that and I will withdraw this motion.

The Chair: Thank you.

Shall section 84 carry? Carried.

Moving to section 85, we have government motion 224.

Ms. Smith: I move that subsection 85(2) of the bill be amended by striking out "and volunteers."

We heard a lot about suspected onerous requirements on homes, and we just felt that with respect to the emergency plan as set out in section 85, it was important for our staff to be aware and to be trained. The volunteers obviously would be aware, but we're not expecting that they be trained with respect to the program.

The Chair: If there's no discussion, I will call the vote. All those in favour of the motion? Opposed? The motion is carried.

Shall section 85, as amended, carry? Carried.

Shall section 86 carry? Carried.

Moving to section 87, we have government motion 225.

0930

Ms. Smith: I move that clause 87(2)(a) of the bill be struck out.

We are moving this regulation-making power to the end of the bill so that any regulations under this particular section would apply to the entire bill, not to just this particular section.

The Chair: Those in favour of the motion? Opposed? Carried.

Government motion 226.

Ms. Smith: I move that subsection 87(2) of the bill be amended by adding the following clauses:

"(i.1) defining 'temporary' and 'casual' for the purposes of section 72;

"(i.2) providing that the use of other classes of staff are restricted as provided for in section 72, and defining those classes of staff."

Chair, we did hear some questions around what was "temporary" and "casual," so we felt, for the purposes of this particular section of the act, that we should be defining them. Subsection (2) would provide us with the ability to define other classes and to restrict other classes, so that in a situation where someone said, "Well, I'm not a temporary; I'm a walk-in staff," or "I'm a"—fill in the blank—we wanted to be able to address that.

The Chair: Discussion? Those in favour of the motion? Opposed? Carried.

Government motion 227.

Ms. Smith: I move that clause 87(2)(q) of the bill be amended by striking out "quality management system" and substituting "continuous quality improvement system."

Again, this is to address the concerns of the OMA and others who requested that we include language about CQI.

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

Shall section 87, as amended, carry? It is carried.

Moving to section 88, we have PC motion 228.

Mrs. Witmer: I move that subsection 88(1) of the bill be struck out and the following substituted:

"Funding

"(1) The minister shall provide funding for a long-term care home consistent with section 1 and sufficient to provide care and services required in part II."

The Chair: The motion is out of order.

NDP motion 229.

Ms. Martel: I move that subsection 88(1) of the bill be struck out and the following substituted:

"Funding

"(1) The minister shall provide funding to long-term care homes."

The Chair: The motion is out of order.

This leads us to NDP motion 230.

Ms. Martel: I move that subsection 88(2) of the bill be amended by striking out "may" wherever it appears, and in each case substituting "shall."

This was put forward to us by the Ontario Long Term Care Association. Actually, it might have been OANHSS.

Where it says "Conditions," it says, "(2) The minister may attach conditions to funding provided under subsection (1)...." I guess I would prefer to see "shall." I want to make sure that the money goes where it's intended to go so that, if the government is providing funding for hands-on, front-line care, that's exactly where it goes. I'm not sure how you guarantee that it does that unless you are attaching conditions to how funding that's provided by the government through the Ministry of Health actually goes where it's supposed to go. So that is the reason to change "may" to "shall."

The Chair: Ms. Smith.

Ms. Smith: You're not going to rule this one out of order?

Ms. Martel: It doesn't say "shall fund."

Ms. Smith: It says "shall attach conditions to funding."

The Chair: I'm thinking.

I've been advised that this motion is fine.

Ms. Smith: All right. We won't be supporting it.

Ms. Martel: Can I just make this point, Chair? I'm really surprised, all right? It seems to me that if you're going to make an investment in long-term care—particularly in front-line care and hands-on care—you're giving that money to long-term-care homes and you want to be sure that it goes there. The only way you can be sure that

it goes there is to ensure that there are conditions attached to how it's used. I would think that the government would be very interested in doing that: in making the investment and making sure that it gets where it is supposed to go. There's no outlining here about exactly how that funding should be spent or how much—although I'd like to add that, but I recognize that that would be out of order. But it certainly says that if you're going to give any public money, taxpayer money, you'd better make sure that it's going to what you announce it's going to be used for. I really don't see how you can do that and be sure of that and assure the public of that unless you make sure that there are some conditions attached to it: that homes have to spend money for nursing on nurses, that homes have to spend money for PSWs on PSWs, that any increase in the food budget goes to the food budget etc.

Ms. Smith: I believe that some of Ms. Martel's concerns are addressed by subsection 3: "The provision of funding under subsection (1) is subject to any other conditions, rules and restrictions that may be provided for in the regulations, including requirements relating to eligibility to receive funding or how funding may be used."

So through our regulation-making power, we're able to address some of those concerns.

Ms. Martel: If it was only to be done in regulation, I'm not sure why the section would appear here in the first place. Since it does and since it doesn't appear just by itself in the regulation-making section, did the ministry attach some greater relevance to it by putting it in here? It appears in this section. The only quibble we're having is over the words "shall" or "may."

Ms. Smith: The creation of this section allows us to attach particular conditions to particular funding to certain operators, as opposed to a condition that would be attributed just generally to a funding allocation. It's to give us more flexibility in order to put conditions if we need to.

Ms. Martel: Can you give us some examples?

Ms. Smith: It allows us to put conditions on funding, so that if we were to be providing funding, let's say for a SARS outbreak, to address the homes that had incurred extra costs for all their additional staffing, for changes that they had to make to the home etc., we could target that funding particularly to them. This provision allows for those kinds of conditions to be attached so that we aren't providing that funding to all homes or for all infection control, but for a very detailed and specific situation.

Ms. Martel: It appears in a section that talks about the minister providing funding for homes generally, so could it also include, then, money that is supposed to go to enhancing staffing, for example, since it appears in this particular section and there's no reference to an emergency etc.?

Ms. Smith: There's no limit to what conditions could be placed.

Ms. Martel: I'd certainly like to see some conditions attached, because I'm not sure that money that goes to long-term-care homes is always going to what the government hopes it is. I think if we're going to improve quality of care, we really want to be sure about that. I'll leave it there.

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

PC motion 231.

Mrs. Witmer: I move that subsection 88(4) of the bill be amended by adding "subject to the provisions of section 160" at the end.

Of course, we're still dealing here with funding, and this simply would speak to the issue of an appeal. Currently, it appears that it would not be appropriate to allow for an appeal related to a funding set off in one section, section 160, and not allow it in another section, section 88(4). The opinion is that the set-off must be subject to appeal in order that the process is transparent. As you know, if we refer back to section 160, it does set out the provisions relating to appeals.

Ms. Smith: In fact, section 160 only relates to appeals of orders, so it would be completely inappropriate to include section 88 under section 160.

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

NDP motion 232.

0940

Ms. Martel: I move that section 88 of the bill be amended by adding the following subsections:

"New requirements impact

"(5) The minister shall commission a third-party cost-benefit analysis of the financial and human resources implications burden that will be placed on homes and their partners in care as a result of new requirements, and, at a minimum, increase operating funding by that amount, and shall fund homes and their partners in care in accordance with this analysis, or whenever there are new standards or mandatory requirements that are placed on homes that prove to add additional financial burden to homes and other parties, and these increases shall take effect at the same time as the new burdens.

"Multi-year funding

"(6) The minister shall develop and implement a multi-year funding commitment for long-term care homes that,

"(a) enables the sustainability of quality and that supports the long-term care homes in effective multi-year planning of care and services; and

"(b) supports regulated and uncontrollable costs.

"Capital renewal program

"(7) The minister shall develop and maintain a funded capital renewal program that will achieve the multi-year capital renewal of the province's long-term care homes and offset the remaining mortgage obligations."

The Chair: This motion is out of order.

Ms. Smith: But you did a lovely job reading it.

The Chair: We move then to PC motion 233.

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

"Capital renewal or retrofit

"88.1 The minister may, out of monies appropriated by the Legislature for the purpose, establish financial assistance for a licensee to assist in defraying capital expenditures incurred or to be incurred by the licensee with respect to the renewal or retrofit of long-term care homes."

The Chair: Can I just kind of set that aside for a second? I should have asked a question. Shall section 88 carry? It is carried.

Now, back to motion 233.

Mrs. Witmer: Okay. This motion, in many respects, also speaks to the motion introduced by Ms. Martel. The reality is that in this jurisdiction we have more three- and four-bed wards than any other province in Canada. Other Canadian provinces are taking strides to eliminate them, or they have mostly eliminated these type of rooms.

We also know that those individuals who are living in the three- and four-bed wards are paying the same as the individuals who are living in the one- and two-bed wards in the newly designed homes, so this new section would effectively work to eliminate the three- and four-bed ward accommodation in long-term care in the province of Ontario over the next 15 years, and that would at least allow us to catch up to where other Canadian provinces are.

It would also support the capital renewal program that our government undertook when we redeveloped the 16,000 D beds. This would actually deal with the B and C beds.

I think we need to recognize that I did introduce a private member's motion into the Legislature in the fall. It was supported by all three parties and they did agree that there was a need for a capital renewal program for these B and C beds. That was supported by all the parties on November 23, 2006. As a result of that approval by all three political parties, I believe there should be a section in Bill 140 that provides the minister with the ability to flow the capital funding. In addition, a commitment in writing to work with the sector, I think, is absolutely necessary. It provides some certainty to the residents that their homes are going to be renewed. Despite the fact that they're paying the same price as someone in a new home, they obviously don't have the wheelchair accessibility or they don't have the same small dining area, living accommodations, so this motion is intended to eliminate three- and four-bed ward accommodation.

The Chair: Ms. Martel?

Ms. Martel: Since my motion was ruled out of order, I'm going to speak to this one.

The Chair: Would you like an explanation?

Ms. Martel: No, I know why. That's okay, Chair. But I did want to get an opportunity to speak to it.

Serious concerns were raised during the course of the public hearings, particularly from homes in smaller rural areas, and I think we need to respond to that. There are significant concerns about licensing and how the licensing is attached to structural compliance. We are operating in an environment where the government has made no commitment to or made no statement about the possibility of a capital renewal plan to upgrade B and C homes. We heard a lot of that concern in terms of how a lack of announcement in that regard is affecting homes' boards when they go to their banks. We heard very clearly that some already have been told very clearly by their banks that they are going to have difficulty borrowing money, or their interest charges are going to increase.

It seems to me that the temperature around this whole matter could be lowered quite significantly if the government was to indicate through this motion that the possibility for a government-funded retrofit program may exist or may be done, as appears in Mrs. Witmer's motion. We really do need to be moving, for the appropriate care of our residents, to different standards, much improved standards, and the only way, frankly, that's going to be done is if the government is on board with a capital renewal program.

Ms. Smith: Subsection 88(1) is broad enough to include any capital renewal program that the ministry may undertake in the future, although I have to say I appreciated hearing Mrs. Witmer's speech on this again.

Mrs. Witmer: I guess what struck me when we were participating in the hearings, particularly in the communities outside of the city of Toronto, were the number of small homes that have been open 30, 45, 50 years by a family, obviously by a family who saw a need in a community and built a home, and the family continues to operate the home for the residents in that community. Some of the communities are pretty small, 500 or 1,000. But it has allowed people living in that community to stay in the community. They haven't had to go to a home in a larger urban centre, and we know how important it is to be able to stay within your own local community, to have your family and friends as close by as possible.

I was struck by the fact that some of them said to us, "You know, we put our father here," or mother. "We knew it was a C facility, and we had considered moving them somewhere else, to a facility, a home"—and there's still that confusion of the two words, which I thought was interesting—"but the care they received here was so outstanding."

I just want to make a comment. We really do owe a debt of gratitude to the people who, number one, opened these homes years ago to care for, generally, older, vulnerable people, and who continue to operate the homes, as well as to their dedicated staff. I was really impressed by the level of commitment that the staff spoke about. I hope that sooner as opposed to later we will see a capital renewal plan for these people who have shown their dedication over many years. There will be some certainty. They will be able to get the money from the bank, they'll be able to renew the homes, and there will be a plan of action. I really was impressed by these people in the smaller homes.

Ms. Martel: I might just reinforce for the record that there is, of course, a difference between 88(1) and 88.1, the latter being the one we're debating now, Mrs. Witmer's motion. This particular motion specifically

speaks to capital expenditures, so it makes it really clear where government funding could or should go, and I think that's the kind of signal that needs to be sent and the kind of message that people in long-term care need to hear right now, especially in light of the sections that come very soon with respect to fixed licences. So the motion, of course, is much more clear in talking about a capital program that will allow for retrofitting, particularly of B and C homes.

The Chair: No other debate?

Mrs. Witmer: I'd like a recorded vote, please.

The Chair: A recorded vote.

Ayes

Martel, Witmer.

Nays

Jeffrey, Leal, Ramal, Rinaldi, Smith.

The Chair: The motion is lost.

Moving to section 89, we have government motion 234.

0950

Ms. Smith: I move that paragraph 3 of subsection 89(1) of the bill be amended by striking out "determined under the agreement" at the end.

This is just for clarity. The inclusion of "determined under the agreement" actually doesn't make a lot of sense in this section, and what we have provided for is that a reasonable amount be determined. So it should just be removed.

The Chair: No discussion? I call the vote. Those in favour? Opposed? Carried.

That moves us to PC motion 235.

Mrs. Witmer: I move that subsection 89(3) of the bill be amended by striking out "the resident" and substituting "whoever signed the original agreement."

I guess the argument here in support of this would be that the family members who have control over the finances of the residents do have an obligation and must be made responsible for paying that basic copayment for their family member. Regrettably, to date, I understand that the policies of the ministry have in fact enabled financial abuse by family members and the powers of attorney for finance by not explicitly holding these people accountable for paying the provincial copayment on behalf of the residents. So it's obviously the people in the province of Ontario, the taxpayers, who are suffering, and as it is worded, I understand this continues to foster this type of abuse. It does mean millions of dollars' worth of annual liability for both the government and the operators, because the government pays half of the bad debt. But it's also a betrayal by family members of their loved ones when they renege on their duty to honour the residents' financial obligations. So I believe it is important that we address this issue at this time. I also understand that bad debt has been increasing at a rate of approximately 20% per year since 2003.

Ms. Smith: I would just point out that under motion 237 we are creating a reg-making ability to deal with bad debt, because we too have heard the concerns, and we will be dealing with that through regulations.

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

I will now ask, shall section 89, as amended, carry? It is carried.

Shall section 90 carry? It is carried.

We move now to section 91 and NDP motion 236.

Ms. Martel: I move that section 91 of the bill be amended by adding the following subsection:

"Public

"(4) The director shall make public the reports submitted under subsection (3)."

This whole section deals with non-arm's-length transactions, so it's really clear that the licensee "shall not enter into a non-arm's length transaction...." That's prohibited by the regulations. A licensee shall not enter into such a transaction "without the prior consent of the director if the regulations require such consent...." In the reporting section, which is (3), "Every licensee of a long-term care home shall submit reports to the director ... on every non-arm's length transaction entered into by the licensee."

So the whole flavour of this is that it is not something that the director or the ministry is encouraging, which is fine with me, but it seems to me that if that's the flavour and that's the concern, then those transactions that are allowed, those non-arm's-length transactions, should become public so we can see what it is the director finally agreed to.

This was submitted to us as a proposal by the Ontario Nurses' Association.

Ms. Smith: I expected so much more support than just "Fine with me," Shelley.

I think that section 91 does go a long way to address the concerns that have been raised around non-arm's-length transactions. We are setting out what reports will need to be submitted through regulation. We have not determined that yet. There may be some confidentiality issues around various reports that may need to be submitted, so I don't think it would be appropriate to include the amendment that Ms. Martel is suggesting at this time.

Ms. Martel: You can cover a lot under "privileged information" if you want to, but let me remind everybody that the whole tone of this section is that the ministry or the director would have concerns around licensees entering into these kinds of transactions. I don't have a problem with that. If the director and the ministry have that kind of concern and are not terribly open to it, it seems to me that on those occasions where the ministry does, that should be a public matter.

The Chair: No additional discussion? I will call the vote. Those in favour of the motion? Opposed? The motion is lost.

I will ask, shall section 91 carry? Carried.

That brings us now to section 92. Government motion 237.

Ms. Smith: I move that subsection 92(2) of the bill be amended by adding the following clause:

"(c.1) governing the payment of amounts charged by the licensee under section 89."

This is our provision to deal with bad debts, which we've talked about a few times yesterday and again today.

The Chair: No other discussion? I will call the vote. Those in favour of the motion? Those opposed? It is carried.

I will ask, shall section 92, as amended, carry? It is carried.

Moving to section 93, we have PC motion 238.

Mrs. Witmer: I move that subsection 93(1) of the bill be struck out and the following substituted:

"Licence required

"(1) No person shall establish or maintain a long-term-care home unless under the authority of a licence issued by the director under this act."

There was some concern expressed. The Ontario Retirement Communities Association did appear before us and was concerned about the impact it might have on retirement homes. I understand that Ms. Smith has indicated that the regulations are going to exempt retirement homes and that there is currently a province-wide consultation taking place to take a look at new legislation which might govern retirement homes. I think we're looking for clarification here, confirming that retirement homes will be exempted from the requirements of this particular subsection of the bill.

Ms. Smith: As Ms. Witmer mentioned, there is a consultation going on right now with respect to retirement homes. I believe it started yesterday in Sudbury. We don't want to presume the findings of that consultation, but under clause 93(2)(b), the regulation-making authority is there to exclude other premises. The effect of Ms. Witmer's amendment would be to exclude all municipal homes—which presently are given approvals, not licences—and First Nations homes. Our section 93 as drafted will allow us the flexibility to deal with other situations as they become evident, including retirement homes and any other situations or living arrangements that we may want to address with this regulation.

Mrs. Witmer: So you're saying that there would also be the ability to avoid the impact on, say, assisted living, supportive housing or hospices that all meet the definition as set out in subsection 93(1)?

Ms. Smith: In clause 93(2)(b), we have other premises provided for in the regulation, so we can address it if there are certain situations that arise that we think should be excluded.

Mrs. Witmer: And you'll be doing that in regulation.

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Ms. Smith: Yes. It gives us the flexibility to not only address what's happening in the retirement home consultation that's happening now but also to address situations that may arise in the future that we can't actually predict.

Mrs. Witmer: So did you say that retirement homes are going to be exempt?

Ms. Smith: I said that we couldn't prejudge what the findings of the review of retirement homes were going to be, but that when their consultation was complete we would be able to address the retirement home issue through clause (b) of subsection (2).

Mrs. Witmer: Okay, thank you. I will then withdraw this.

The Chair: The motion is withdrawn.

I will ask, shall section 93 carry? Carried.

Section 94: NDP motion 239.

Ms. Martel: I move that section 94 of the bill be amended by adding the following subsection:

"First refusal for non-profit

"(2) The minister shall give a right of first refusal to not-for-profit operators or municipal or county governments when establishing new long-term-care beds."

Section 94 gives the minister the general ability to determine the need for a long-term-care home in a particular area. The section sets out what would be in the public interest, having taken into account a number of things: bed capacity already, other services that are available, etc.

From my perspective, what is in the public interest is ensuring that we have more not-for-profit or municipal or county-operated long-term-care beds in the province of Ontario. That would come as no surprise to anyone in this room. So I think that if the government is interested in also signalling their commitment to not-for-profit long-term care in the province, then the government would be interested as well, in the public interest, in ensuring that when the minister makes a determination for a need for a new long-term-care home or for beds, the ministry is going to not-for-profits or county and municipal governments first to look at their ability to make that offer and to look at their ability to operate those homes, to be licensed or to operate under an approval. This particular amendment was provided to the committee in a submission made by the Registered Nurses Association of Ontario.

The Chair: Any discussion?

Ms. Smith: Yes. In motion 357, we are indicating our recognition of the not-for-profit sector and commitment to the promotion of the delivery of long-term care. I know we haven't gotten to that motion yet; it's 357. It will be in the preamble. I would just point out that, depending on how the program is created, a right of first refusal does not necessarily favour the not-for-profit sector. I note that in previous incarnations, some redevelopment programs have favoured other operators more than not-for-profits, based on how they are issuing licences. So depending on the funding model for a redevelopment program, you can favour, or not, the not-for-profit sector. So I'm not sure that this addition to the legislation would in fact get to the goal that Ms. Martel is setting out.

I'd also note that, in the public interest, in the legislation we look at sector balance. So the minister will be looking at that in determining new licences.

Ms. Martel: A couple of points, if I might. If I look at the government's provision in 357, this is an amendment to the preamble which gives a general statement that the government is committed to not-for-profit. I'm talking about a very specific action that will clearly indicate and demonstrate the government's commitment to the not-for-profit, not just a general principle. You can have lots of general principles, but if you give no effect to them, then they also have no meaning. So if the government is committed, as they state they are in the preamble, then the government would want to give effect to that commitment by clearly demonstrating with some action how they are going to demonstrate that commitment. I think that section 94 gives an excellent opportunity for the government to put its money where its mouth is, so to speak, and show very clearly that it is interested in having more not-for-profit and municipal and public homes for the aged in Ontario.

Secondly, with respect to what's going on in the sector, there certainly was a bias by the former Conservative government to award many of the 20,000 new long-term-care homes to the private sector. I disagreed with that. I was very public about that. We know that there are new requests for proposals that are out right now. What I want to make sure is that there is a change in that particular direction and that we change the balance, because from my perspective the balance right now, with Ontario being the province that has the most for-profit beds in the country—I don't think that's a good balance. I don't think that's in the public interest. That means that money that should go into patient care is instead going to the profits of some of those providers, and I don't think that's what we should be doing. So I'm very interested in changing the balance in favour of not-for-profits and municipal homes for the aged.

Thirdly, the parliamentary assistant says that, depending on the funding model that you implement, you can favour or not favour not-for-profits. Then I would say to the government, you should develop a funding model that will favour the not-for-profits. It's in your hands to develop a model of funding, a redevelopment plan, in the same way that the Conservatives did for the D beds. The funding model is entirely in the government's hands. So, as you develop a model for funding, if it is redevelopment or the development of new beds, then you put that model in a way that will favour not-for-profits.

Let me just say again: You can easily resolve the funding issue or who is favoured by developing a model that is in the interests of promoting not-for-profits and municipal homes for the aged. I think it is in the public interest to shift the sector balance, because there is far too much of a percentage of homes in the hands of for-profits now.

Finally, just making the statement that you're committed to not-for-profits in the preamble without having any other section in the bill that actually gives life to that, gives meaning to that or allows the rubber to hit the road in terms of having some specific change occur makes the preamble and the commitment meaningless. Here's an actual way that the government could demonstrate its commitment, and that is by making sure that section 94 clearly says that when the minister is going to determine a need for new long-term-care beds, the minister is going to go to the not-for-profit and municipal and county governments to see how they can participate first. These are the first people he's going to go see when there are new beds to be permitted out there.

The Chair: No further discussion? I will call the vote.

Ms. Martel: A recorded vote, please, Chair.

The Chair: A recorded vote.

Ayes

Martel.

Nays

Jeffrey, Leal, Ramal, Rinaldi, Smith, Witmer.

The Chair: The motion is lost.

I will now ask, shall section 94 carry? Carried.

Shall section 95 carry? Carried.

Moving to section 96, we have government motion 240.

Ms. Smith: I move that clauses 96(1)(b), (c) and (d) of the bill be struck out and the following substituted:

"(b) the past conduct relating to the operation of a long-term care home or any other matter or business of the following affords reasonable grounds to believe that the home will be operated in accordance with the law and with honesty and integrity:

"(i) the person,

"(ii) if the person is a corporation, the officers and directors of the corporation and any other person with a controlling interest in the corporation, and

"(iii) if the person with a controlling interest referred to in subclause (ii) is a corporation, the officers and directors of the corporation;

"(c) it has been demonstrated by the person that the person or, where the person is a corporation, its officers and directors and the persons with a controlling interest in it, is competent to operate a long-term care home in a responsible manner in accordance with this act and the regulations and is in a position to furnish or provide the required services;

"(d) the past conduct relating to the operation of a long-term care home or any other matter or business of the following affords reasonable grounds to believe that the home will not be operated in a manner that is prejudicial to the health, safety or welfare of its residents:

"(i) the person,

"(ii) if the person is a corporation, the officers and directors of the corporation and any other person with a controlling interest in the corporation, and

"(iii) if the person with a controlling interest referred to in subclause (ii) is a corporation, the officers and directors of the corporation; and."

The Chair: Do you wish to speak to it?

Ms. Smith: This is a continuation on our clarity about controlling interests and ensuring that we have the opportunity to review not only past conduct relating to long-term care but in other areas where we have potential operators who are coming to the sector for the first time.

1010

The Chair: Any other discussion? Seeing none, I will call the vote. Those in favour of the motion? Those opposed? The motion is carried.

I will now ask, shall section 96, as amended, carry? Carried.

I will ask, shall sections 97 to 99, inclusive, carry? They are carried.

That brings us now to section 100, PC motion 241.

Mrs. Witmer: I move that sections 100 and 101 of the bill be struck out and the following substituted:

"Term

"100(1) A licence shall be issued for a fixed term, specified in the licence, which shall not exceed 25 years.

"New 25-year licence

"(2) A licensee with a replacement licence of 15 years or less, as set out in subsection 180(3), shall receive a new licence for a term of 25 years if there is continued demand for the beds in the area and

"(a) the licensee meets the provincial design standards; or

"(b) the licensee meets the provincial retrofit design standards.

"When commences

"(3) The 25-year licence term commences on the day the licensee receives occupancy approval from the ministry for the rebuilt or retrofit home.

"Replacement licence

"(4) A replacement licence of 20 years or more, as set out in subsection 180(3), shall be renewed at the end of the transitional term for an additional 10-year term, and every 10 years thereafter for a 10-year term, if the licensee can demonstrate the following:

"1. There is continued demand for the beds in the area.

"2. The home does not have ongoing, unresolved compliance issues.

"3. The home is structurally fit to meet the needs of the residents.

"Expiry

"(5) A licence expires at the end of its fixed term if the criteria in subsection (2) or (4) are not met.

"Opportunity to transfer

"(6) Despite subsection (5), if the director is not satisfied that there is a continued demand for beds in the area, the licensee will be given the opportunity to transfer their licence to another area, if there is a need for beds in that area as agreed to by the director, and if clauses (2)(a) and (b) are satisfied.

"Same

"(7) Despite subsection (5), if paragraph 1 of subsection (4) cannot be met to the satisfaction of the director, the licensee will be given the opportunity to transfer their licence to another area, if there is a need for beds in that area as agreed to by the director, paragraphs 1 and 2 of subsection (4) are satisfied.

"Revocation

"(8) Nothing in this section prevents a licence from being revoked under section 154.

"Reasons

"(9) If the director is not in agreement that the licensee has satisfied the requirements under subsection (2) or (4), the director is required to provide reasons for the decision.

"Appeal

"(10) A licensee whose licence has not been renewed under this section may appeal the director's decision to the appeal board, and for that purpose, sections 162 to 167 apply with any necessary modifications."

The Chair: I'm going to speak to this bill before you speak, if I could. Procedurally, this motion is in a grey area. It has the effect of amending section 100 and revoking 101 at the same time. Traditionally, we don't revoke a section but we simply vote against it. However, I'm going to allow it to stand, but I would ask that in the future the sections be dealt with individually. Traditionally, they have been dealt with individually. This one kind of circumvents that, but I will allow it to stand.

Mrs. Witmer: Thank you. I do believe this is a very important section. It was probably the one section where there was no consultation, despite the fact that the government and its representatives indicated that there had been consultation with the public and with stakeholders who have an interest in this particular area. This whole issue of fixed licensing terms for long-term-care homes that is going to be based solely on the age and the structure of the building, without taking a look at whether they're meeting their obligations or anything else—I will tell you that nowhere else in North America do we have this attempt to enshrine that in law. There was no consultation. Nobody asked either the not-for-profits and the people who run the municipal homes or the people who have the private homes whether or not this was appropriate.

An amendment was provided that attempted to meet the government halfway—a compromise—and I've just put that amendment forward. It was drafted by the Ontario Long Term Care Association. They didn't come out and say, "We don't want fixed licence terms"; they acknowledged that if this is what the government chose to do, they understood. But they were prepared to put forward this type of compromise to at least make sure there was some certainty in the sector and that if a licence is going to be revoked, it is going to be for just cause.

Also, this moves us forward, hopefully. If the government is prepared to indicate that they are going to be involved in a capital renewal plan, we could actually eliminate the three- and four-bed ward accommodation in Ontario and provide some reasonable and appropriate certainty to the licensees, the residents and the families.

Instead, if the bill continues to move forward as it is written, Ontario will be the first jurisdiction in Canada,

likely in North America, to enshrine in law a fixed licence term for long-term-care homes that is based solely on the age and structure of the building—nothing to do with compliance or whether that home is meeting the needs of its residents; nothing to do with performance. Other jurisdictions and the law we currently have focus licence renewal on the performance of the home in meeting the care and service requirements as set out in legislation and regulations.

We have a scheme here that, if not amended, is going to create uncertainty. We heard people step up to the plate time and time and time again and say that if they had this short term, if there wasn't any guarantee of a renewal plan for the C and B beds, they wouldn't have the money to renew their own homes; they aren't going to be able to borrow it from the bank because nobody's going to lend you money if there's this much uncertainty about the future of the home. And people in those small rural communities I talked about before could all lose their homes. I hope it's not the intent of the government to close down all those little homes in small communities across the province and force all the people to go to the larger urban centres. I'll tell you, there is a fear out there, when you travel to the small towns and villages, that they're going to be forced—for example, everybody who lives close to London is going to have to go there because the homes in Clinton, Exeter, Hensall and Zurich are all going to be closed down.

So the current scheme creates uncertainty for the licensee, the staff, the families, the residents. The act puts a deadline on the operating licence, and it provides no answer to the question of what happens next.

Even the new homes are going to have their licences expire 25 years from the date they first admitted their residents, which in many cases was 2001. Only the new homes opening after this bill passes are actually going to get the 25-year licence.

1020

So three years from the licence expiry date, which could be 10 years or 12 years, whatever, under the current plan the ministry can do anything it wants to. They can take away the licence. They can close the home. They can move the beds—you know, from Zurich to London. They can move the residents to another community. They could ask the operator to rebuild to the new design standards to keep their licence, knowing full well that this is totally impossible from a financial point of view without the government providing some capital funding. They could ask the operator to invest hundreds of thousands or even millions of dollars to do upgrades to their home that are not going to address the core issues of resident comfort, dignity and safety by continuing to have residents live in three- and four-bed wards. They can decide to renew the licence with no changes because at that time it might be the politically expedient thing to do, or the government may decide that that particular community does not deserve a new home.

I guess the problem currently is that the ministry doesn't have to give a reason for its decision. I know there is going to be some change made to the time frame. It is very frightening. I think we also have to take into consideration that we have a shortage of long-term-care beds in the province, and that shortage is simply going to increase as the number of older people increases. The provincial average occupancy today is well over 98%. And do you know what? We probably aren't going to be moving beds around because they're probably going to be required everywhere.

I am very disappointed that the government didn't try to reach a compromise and provide some stability, security and certainty to the people in the homes in this province, our oldest and frailest residents, to ensure that the homes in those communities are going to continue to be there; that there will be a capital renewal plan; that they're going to make sure they meet the modern standards of comfort and dignity. I guess under the current licensing scheme there is no commitment to the funding that is required to begin the structural renewal of older homes. That was funding that we provided to the 16,000 D beds in homes. The government has already recognized the need for capital funding by including the $10.35 to the cost of construction for the new homes that they're building in places like Kingston and Hastings county etc. So I don't know how this licensing scheme could be appropriate, because I think that not only Kingston and Hastings county and London—where they've recently made some announcements—but all communities across Ontario deserve the same commitment so that they can continue to not only have a long-term-care home in their community but that their home provides the residents with access to the same physical comforts as the government is now going to provide to residents who are going to be living in these new homes or the ones that were recently rebuilt.

Also, we're going to continue to ask people to pay the same fees; however, half of them receive noticeably less for their money than others. This is a concern not just for the private sector; it's a concern for the charitable and the not-for-profit homes. They're concerned that their donors will be more reluctant to continue their support if this does not change. They are concerned about their ability to obtain financing on reasonable terms. They feel it will be further weakened by the limited licensing scheme and lack of funding commitment to rebuild the older homes. If you combine this with the fact that this act limits the value of the home by restricting transfer to only another not-for-profit operator currently, this just magnifies the issue.

Probably the people who are most put at risk by the current licensing scheme are the small charitable homes and those small homes that we heard from in rural Ontario. They might have to exit the sector; the home will no longer be available in that small town or that community.

Let's remember: The number of seniors aged 75 and over is going to increase by 49% by 2016. That is less than 10 years away. That is also the time that 300-plus long-term-care homes will have their operating licences

expire. So there is huge uncertainty, because they don't know what the government is going to do, and it can be pulled for any reason. So the cost to borrow money also is going to increase because the risks to the lenders have changed dramatically. There is less money today to provide services that are paid for out of the accommodation envelope, such as repairs, maintenance, housekeeping, laundry, dietary services, continuing education. The fact is that if the government is not going to provide some certainty that a home will receive a licence beyond a fixed term, the banks are not going to loan the money to the operators for upgrades. In the event that they do, they are going to pay a high, high interest rate that's going to be taken out of the money that should be available for the care of the residents. In the meantime, if the government doesn't make changes, instead of the residents getting a better environment in which to live, these homes are simply going to fall into a state of disrepair.

I would urge the government—I know you haven't tried to look at making changes to this section; I know you've had no discussions with people who are concerned about this issue—remember the pleas that we heard from those small operators out there who just don't have the money. They don't have the money to make the changes. They'd love to do the capital renewal, but there's no money available. We could lose those homes. Those homes could be lost at a time when the number of seniors, as I've just said, is going to increase by 49%. So I would ask you to give very serious consideration to making changes and accepting this particular amendment.

The Chair: Other debate?

Ms. Smith: Great; we get to do it all over again.

Well, I of course have to respond to what Ms. Witmer had to say, if only to put on the record the facts as opposed to the fearmongering that has been shared yet again, which actually I thought you were above.

We are, of course, aware of the demographics, as your government would have been aware of the demographics when you instituted your redevelopment program in the late 1990s. I would note that in the auditor's report of 2002, he noted, "In our 1995 annual report, we noted that, although it was aware of significant growth projected for the population aged 65 and over, the ministry did not have a strategy for dealing with the anticipated increase in demand for long-term-care beds. We also noted that it did not have a systematic plan to determine where beds were most needed and to eliminate the wide variations in bed supply to make it equitable throughout the province."

I believe that 2002 was under your mandate as a government, and you did very little to address that concern. You did, in fact, introduce a redevelopment plan, which, as we have heard many times from a variety of people, including the OLTCA in their response to our white paper—they noted that the method utilized in the allocation of the 20,000 new beds has led to significant overbedding in some areas and a lack of sufficient beds in other areas. Certainly, we heard from a variety of people about the lack of beds in certain areas. What we have tried to do through our legislation and through our licensing scheme is to provide the government with tools to allow for planning of the system.

To your point that we did no consultation, I would just note that in fact we have consulted time and again since 2003 and 2004. Leading up to my report, Commitment to Care, we certainly spoke to a variety of stakeholder groups and over 100 individuals and groups. In 2004, we put out our Future Directions for Legislation Governing Long-Term Care Homes. To that, we received 754 written responses. We had 35 stakeholder group meetings, and we received briefs from 57 stakeholder groups. We also did public meetings in seven locations across the province. Within the future directions for legislation governing long-term care, there were questions dealing with licences, and we did specifically ask the questions around licensing and what people would like to see in that scheme.

1030

I would note that the OLTCA, in its submission to our white paper, requested the elimination of the requirement for public notice and public meetings relating to the decrease in bed capacity or movement of beds to another area in the province. I would note that in your amendment, which you're putting forward as motion 241, you have in fact eliminated any public consultation whatsoever, which I find so very interesting when you talk about the fact that (a) you feel there has been no consultation, and (b) that you feel that the smaller communities are not being heard. In fact, you've eliminated any ability for small communities to be heard in your motion.

As well, I would note in your motion you're allowing for the transfer of beds in two different areas, under subsection (6) and subsection (7), and again with no public consultation. In our legislation, where we're talking about licensing, where we're talking about the changes of bed allocations, we do in fact have a duty to consult the public. I would note in subsection 101(4), in subsection 103(4) and in section 104 a whole scheme for public consultation which you would have us completely lose.

You talked about uncertainty in the system. I would say that part of that is attributable to your legacy and where you've overbuilt and underbuilt. I would note, however, that the present uncertainty that you spoke about was not played out when we spoke to the operator of Omni, in southeastern Ontario, who spoke about the fact that his chain is being sold and he has had no problems with that sale based on the legislation that's out there. As well, we heard about Central Care Corp., which is presently being sold. Again, we've heard no concerns around uncertainty in this sector.

You spoke about the needs and concerns in smaller communities and the fearmongering that you and others have raised about closing homes in small communities. I would just note that that goes counter to our transformation agenda and the McGuinty government's commitment to care close to people's homes through the creation of the local health integrated networks, through

our family health teams and through investments in various small communities across the province. We've shown a huge commitment to care closer to home. I know that in my community we've seen the results of that commitment.

I would note that I've visited dozens of homes over the last three years. I am certainly well aware of the smaller communities' need for homes. We are well aware of the demographics, and I think the suggestion that we would be closing homes in small communities is absolutely ridiculous, knowing full well that we have growth in the numbers of our seniors across the province, and we are committed to ensuring that those seniors receive the care they need in their communities.

What we've done through our scheme, as set out in the legislation, is provide us with the tools that we feel are necessary in order to address the needs across the province, and we will continue to do that.

The Chair: Further discussion?

Mrs. Witmer: I do appreciate the comments. There's only one thing that I would have to say I did not appreciate. I don't think that we have to personalize. Do you know what? We're putting arguments forward on behalf of the individuals whose presentations we listened to over the course of the five days. If there's any fearmongering happening, it's because people did indicate to us their concern. I can also tell you from personal experience that it was some of the people in the homes in the communities throughout Ontario who came to me and said, "We hear we might lose our home and our home won't be here."

I'm telling you what I've heard. I am not fearmongering. People are concerned. There is no reason that needs to be given for the transfer of any home or the closing of any home. There doesn't have to be anything. The ministry just has carte blanche to do whatever they want to do, even if it were based on certain criteria, but there are no criteria here. You need to look at the facts; the ministry needs to look at the facts. The truth is, you can refer to the reports of 2002 and you can refer to the reports of 2004. Currently in the province of Ontario we are no longer underbedded. The provincial average occupancy is well over 98%, and you would be hard-pressed as a ministry to find areas in this province that are hugely overbedded. In fact, we're having the exact opposite problem. We are seeing surgeries in Kingston cancelled. Sudbury is having problems. It doesn't matter where you go in the province of Ontario, the lack of long-term-care beds or alternative-level beds is at a point today where surgeries are being cancelled and emergency rooms are backed up. There are huge problems in the system, so I would encourage the people who are taking a look at this to stop saying we're overbedded. We're not overbedded. The average occupancy today is 98%.

Also, we know that the number of seniors in this province is going to increase by 49% by the year 2016. If you would even compromise to the point where there would be criteria involved in closing down a home, it would provide some certainty, but there is no certainty here. Currently, the ministry simply doesn't have to give a reason for their decision. That's what is creating the uncertainty throughout the province of Ontario. The fearmongering—I mean, the reality is that an older person is very fearful. That's why people can so easily take advantage of them. It was people who approached us. I got calls and I was really quite surprised. I think the reason I got them is because I'd been the Minister of Health and Long-Term Care at one time. But I had no reason to be concerned until I got a few phone calls, and they weren't from operators; they were from innocent people who were concerned about their family member or they were concerned about their own little home in some community not being there when they would need it. I just would urge the government to be more understanding and accommodating. As I say, it's never been my intention to fearmonger and I did not appreciate that comment. I have always tried to put on the record what I hear from other people. My job here is to bring to your attention, whether or not you want to hear it, what I'm hearing from the public in Ontario.

The Chair: Ms. Smith.

Ms. Smith: I appreciate that. I did not mean to personalize it, so I apologize, Mrs. Witmer. I do note, however, that when you started talking about what you were hearing, that people were saying, "I hear my home is closing," that is the fearmongering that I'm getting at and that has been started by the operators. The forgotten campaign by the OLTCA I think is reprehensible. We have heard from the residents' council project that they have expressed grave concerns and would not participate in that because they felt that it was unacceptable. So I just note that for the record.

I don't want to engage in a whole long debate again, but I did want to note that you said there's no obligation for consultation. In fact, with our licensing scheme, three years prior to the end of a licence we do have a duty to consult the public as well as to engage in discussion with the operator, and I would note that under subsection 101(4). On the occupancy rates, we are still seeing homes in the GTA in particular that have occupancy rates in the 70% and 80% range, which would lead us to believe that we still do have some areas that are overbedded. We certainly are all in agreement that there are areas in the province that are underbedded, no doubt about that. I just wanted to clarify the point around section 101 and what I was getting at in my "fearmongering" comments.

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

Before calling the vote on section 100, Ms. Martel, do you wish to speak to it?

Ms. Martel: Yes, I do, Mr. Chair. I am recommending that we vote against section 100 and, tied to that, section 180. Section 100 says, "A licence shall be issued for a fixed term, specified in the licence, which shall not exceed 25 years." Section 180 in the bill then sets out the different categories of beds and the fixed terms, in terms of years, that are attached to each of those. People will see, as they've gone forward in this package, that the two are tied together, and I suggest that we vote against both.

1040

There are a couple of reasons for this. There were certainly a couple of ways to deal with this issue. One was to put forward an amendment, which Mrs. Witmer has done, to try to fix in some way, shape or form what the government has proposed and change the number of years etc. I appreciate that perspective and I appreciate her putting it forward.

The second was the way that I have proposed. It is to vote against the section entirely and not have fixed terms on licences. This is what I want to speak to in terms of my reasoning for that.

First, the government through this particular section proposes a fixed licence that's tied to structural compliance or tied to the age and structure of the home. We did hear during the course of the public hearings concern about that. I'm not talking about concern raised by residents which may or may not have been provoked or prompted by others. I'm talking about some direct questions that were raised with operators, particularly operators of small homes in rural areas, and also operators of not-for-profit homes. Those are the folks I want to focus on, because the reality is that the chains will always be able to manage, no matter what. Whether it's licences, whether it's funding etc., the chains will always be able to make their way. I'm not worried about the chain operations when I look at this particular section.

We did clearly hear from small operators, we did clearly hear from not-for-profits, that already institutions that they have a financial relationship with are raising concerns about what is proposed in this bill. The nature of the concern, which is that these homes are now going to be a risk, is also leading those very same financial institutions to suggest that because of the risk, they would be increasing their borrowing rates or putting other terms and conditions on mortgages or new mortgages. That, of course, will increase the risk of borrowing, and the only folks who are going to benefit from that are the banks. I'm not interested in that kind of scheme at all. I am looking for a way where that is not going to happen. We can argue about whether or not the position being put forward by the financial institutions is legitimate. The reality is that we did hear from people who said that that was already clearly happening, and I think we have to acknowledge that and respond to that.

Secondly, I look at why the government is putting in fixed licences. I can only assume the government wants to do this because they are trying to ensure that there is redevelopment of B and C beds. I'd ask the government to consider a more historical perspective around redevelopment. If you look at the experience of the renewal of the D beds, 14,000 out of the 16,000 did rebuild within the time frame that was set out by the former government, without any licence tied to structure, so without any kind of licence that said, "You have to be done in this time." So 14,000 out of 16,000, from my perspective, is quite a significant number of operators who complied. Granted, they complied because there was a capital funding project that was available, but I think that the government, in whatever it does, is going to have to acknowledge that and also have to respond. Without any kind of capital program here, much like the Tories had in the last two governments, I don't think we're going to be able to see that redevelopment. There will just be any number of smaller homes—not-for-profit, for-profit—that will not be able to manage the financial costs associated with that.

This is why I was happy, when I got my original package of amendments, to see that the government, I thought, was moving a bit down the road to recognize that assistance with capital costs was going to be required. In the amendment, which was pulled—and I want to make it clear that it was pulled when we started on Monday—that was in our package, around section 125, it clearly said,

"Assistance with capital costs

"(3) Without restricting the generality of section 88"—we've dealt with section 88 already. That is a section that talks about funding of homes. It says, "Without restricting the generality of section 88 to assist in defraying the costs of establishing a new municipal home or the alteration, renovation or addition to or extension of an existing municipal home, the minister may direct payment out of the money appropriated by the Legislature for the purpose of an amount determined in accordance with the regulations and based on the proportion of the cost that is allocated to the unorganized parts of the territorial district in which the home is established."

Now, I want to say again very clearly: It was pulled. However, I was happy when I saw it because I thought there was clear recognition here that we're going to have to have capital assistance from the government. This case only referred to municipal homes, but that was a start, in my opinion—we're going to have to have that. I regret that it was pulled. I don't know the reason for that, but I certainly thought there was a recognition that the government had heard what people had to say about the absolute necessity of having a capital funding program. So I hope the government is going to reconsider that.

From my perspective, it was clear—and it's the smaller folks whom I'm speaking for—that there are concerns that financial institutions, rightly or wrongly, are speaking to homes they are having a funding relationship with to suggest that they are going to be a risk, to suggest that they are going to change the terms and conditions and to suggest that there is going to be an increased cost to borrowing, which is to nobody's benefit, as I said, except the bank's.

Secondly, I look at the D beds and I see, without any kind of implementation of a fixed licence tied to structure, that the overwhelming majority of homes did make the renovations that were necessary. They did that, of course, with a government capital renewal program, which is going to be essential for B and C redevelopment.

The final point I want to make is, if the government has specific concerns about specific homes, they could deal with those under section 99, which talks about con-

ditions of the licence. Subsection 99(1) says, "A licence is subject to the conditions, if any, that are provided for in the regulations." So, as I read that, I see that if the government has some specific concerns about specific homes that they think won't comply, even in the environment where there is a capital redevelopment program, then deal with those specific homes by attaching something to their own licence. Don't cover the waterfront with everybody in the way that it's being covered with respect to the fixed licence.

My final point is that I think it was clear with the D beds and the government's capital program that homes and operators did step up to the plate and did make the structural changes that were required. I think that if the government had a redevelopment program, the same scenario would follow; those operators with B and C beds would also step up to the plate. You're not going to have 35,000 B and C beds re-created overnight into two-bed wards—I understand that—but the D beds weren't altered overnight either. Clearly, any kind of structural plan, financial plan to aid in the restructuring of these beds will have to be carried out over time and the government could hopefully fix a set number of beds that it would like to see renovated, redone or upgraded each year.

I come down on the side of not having a fixed licence with a fixed term, because I think to tie a licence to the age and structure of a home is just going to cause all kinds of grief for smaller for-profit and not-for-profit homes in a way that they don't need to have those problems caused. If the government was out there with a capital program, the experience that we have seen—and it's a most recent experience—is that operators will comply, will come forward, and the work will be done.

I would encourage the government to reconsider the approach that it's taking and work with the current structure, which allows for a one-year licence, and if and when there is a problem, to use section 99, which would allow you to set conditions for specific or particular homes that don't want to comply with redevelopment, even with government funding attached.

The Chair: I'll call the vote. Shall section 100 carry? It is carried.

Moving to section 101, we have PC motion 243.

1050

Mrs. Witmer: I would withdraw that motion, based on another motion, 244, by the government.

The Chair: Thank you. That brings us to government motion 244.

Ms. Smith: I move that subsection 101(3) of the bill be struck out.

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

That brings us to NDP motion 245.

Ms. Martel: I move that section 101 of the bill be struck out and the following substituted:

"Reasons

"101 The director shall provide reasons for deciding whether or not to issue a new licence."

This motion followed on what I wanted to do in section 100, so the current section 101 would have been replaced entirely in most of that section with the new 101. That relates specifically to what is currently in the bill around subsection 101(5), which says, "The director is not required to provide reasons for deciding whether or not to issue a new licence." I think the director should always have to provide reasons for deciding whether or not to issue a new licence. I think that's in the public interest and I think that should be a public matter, and that the director should be obliged to do so.

The Chair: Any discussion? Ms. Smith.

Ms. Smith: I just note that under subsection (4), public consultation is required. The government cannot act arbitrarily, so there's always the opportunity for judicial review, but there's also nothing precluding the director from giving reasons through this legislation.

Ms. Martel: Chair, if I might, if I look at subsection 101(4), the obligation on the director is to consult the public. It's not an obligation to provide reasons why the licence was issued or not issued. So I think it's a bizarre circumstance that we would put an onus on the director to consult with the public about new licences, which I absolutely agree with, but then not provide a reason to the same public who participated in those consultations about whether or not that licence was issued and, if it wasn't, why not. I just think, sensibly, to follow the duty to consult also gives rise to a duty to advise people of your decision. I don't understand what the dilemma is about making public those reasons. It is in the public interest. If you want to have the public participate in the process, then they should at least know the reasons why, if something is denied.

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

I will now ask, shall section 101, as amended, carry? It is carried.

To section 102. We have PC motion 246.

Mrs. Witmer: I move that subsection 102(3) of the bill be amended:

(a) by striking out "occupied or" in the portion before clause (a); and

(b) by striking out "unoccupied and" in clause (a).

I think this is really just a matter of some clarity.

Ms. Smith: Chair, could I ask if Ms. Witmer would look at 247, which is our motion.

Mrs. Witmer: You know, I did look at 247—

Ms. Smith: It is a question of clarity, and we've tried to redraft it so it's clearer. I would just point out that in your motion we could interpret it to read that an occupied bed is not available, which in fact is not available because it's occupied. That's not what we want. We want to look at beds that are unoccupied and unavailable. That's why in motion 247 we've made that, I think, a little clearer. So if you would be willing to look at our language, I think it actually clarifies a little bit better.

Mrs. Witmer: I do appreciate that explanation and I would withdraw my amendment.

The Chair: Thank you. Motion 246 is withdrawn, bringing us to government motion 247.

Mr. Jeff Leal (Peterborough): I move that subsection 102(3) of the bill be struck out and the following substituted:

"Reduction of licensed beds

"(3) If beds are unoccupied and unavailable for occupancy for 14 consecutive days or more, and the licensee did not obtain written permission from the director for them not to be available for occupancy, the director may, by order served on the licensee,

"(a) amend the licence to reduce the number of beds allowed under the licence by the number of unoccupied and unavailable beds; or

"(b) impose any conditions on the licence that are provided for in the regulations."

The Chair: Thank you. Does anyone wish to speak to this motion?

Ms. Smith: Same comments as on the previous motion.

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

I will ask the question: Shall section 102, as amended, carry? It is carried.

We now move to a new section 102.1, NDP motion 248.

Ms. Martel: Thank you, Chair. I move that the bill be amended by adding the following section:

"Certain appeals

"102.1 Despite anything else in this act, the following are parties to an appeal under subsection 96(4) or 102(4), and have the same rights as the other parties:

"1. Family members of residents.

"2. Residents' councils.

"3. Unions representing long-term care home staff."

This particular section references the ability of a licensee whose licence has been amended or had conditions imposed on it to appeal that director's order to the appeal board. I'm suggesting that other parties who would have an interest in that because they have family members living in the home or because they work in the home should also be able to participate in that process. This proposal was made by the Ontario Nurses' Association.

The Chair: Debate?

Ms. Smith: Yes. First of all, I would note that it's 96(3) that is the appeal. And secondly, I don't recall hearing from any residents' council or family council members whatsoever about wanting to participate in the appeal process, so I will not be supporting this motion.

Ms. Martel: Outside of the fact that you didn't hear from anyone—even though OANHSS submitted it—do you have a reason beyond that that says that people didn't mention it in their presentation so it's not a worthy amendment?

Ms. Smith: The issue is between the government and the licensee. There are provisions for public input around these decisions. I don't see that the residents or family members, or union representatives for that matter, would have a role to play in an appeal.

Ms. Martel: If I might: An issue around a long-term-care home is never just the business of the director and the licensee. Under this particular section, the director can make an order to amend or impose conditions on a licensee and on that licence. I think that's an issue that a number of people would have an interest in and a right to be involved in. These matters aren't just between the government and the licensee, especially if the condition or the order has some kind of an impact on folks in the home.

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

Section 103, government motion 249.

Ms. Smith: I move that subsection 103(7) of the bill be amended by striking out "subsection (2)" and substituting "subsection (6)."

This is just to clarify consistency in drafting.

The Chair: No debate? I will call the question: Those in favour? Opposed? It is carried, moving us to PC motion 250.

Mrs. Witmer: I move that subsection 103(9) of the bill be struck out.

This is the one, of course, that currently is worded to say that a non-profit entity may not transfer a licence or beds to a for-profit entity, expect in limited circumstances provided for in the regulations. Actually, we did hear from the not-for-profits. They felt that this did put them at somewhat of a disadvantage with regard to sales and they thought it might affect the value of their homes. Already today the minister does have discretion over the balance between not-for-profit and for-profit long-term-care homes in clause 95(b). And as we know, all licence transfers today must also be approved by the director under section 103. I put this forward on behalf of those individuals who felt that they may be somewhat disadvantaged.

1100

Ms. Smith: I would just note that we also did hear from a variety of presenters, including the health coalition in some of our communities, who wanted us actually to take out "except in the limited circumstances provided for in the regulations" and wanted to even strengthen this. So while we did hear some who wanted it removed, we heard others who wanted it strengthened. We certainly recognize the need to protect the not-for-profit sector and we think that it's appropriate to keep this in the legislation.

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

Shall section 103, as amended, carry? Carried.

Moving to section 104, we have NDP motion 251.

Ms. Martel: I move that subsection 104(1) of the bill be amended by striking out "or" at the end of clause (d) and by adding the following clause:

"(d.l) approving a management contract under section 109; or."

Right now under section 104, it lists out the situations under which the director would consult the public, so it includes a number of circumstances that can arise where the director shall consult the public. I'd like to add to that that the director shall also consult the public when the director is making a decision to enter into a management contract, and that appears under section 109. So it's one more circumstance or situation where the director would have to consult with the public before the approval or the signing-off of that management contract occurs.

Ms. Smith: I believe that would be adding yet another what has been described as "onerous" process in the legislation. We are providing ourselves with the ability to review management contracts. We are also providing the director with the ability to withdraw approval, and we are requiring our homes to provide us with notice of material change. So there's much more oversight into the management contract question than we've had in the past, and I believe that adding a public consultation on it would be too onerous for the home and the ministry.

Ms. Martel: If I might, Chair, the government is setting out in 104 at least five other areas where the public has to be consulted, so if you want to talk about onerous, then maybe you want to talk about why there are already five and I want to add one more. I just think—

Ms. Smith: Just to address that—

Ms. Martel: —that's kind of bizarre.

The Chair: Ms. Martel has the floor.

Ms. Martel: In the cases that we heard from a lot of the licensees, the issue was the impact on the caseload or the workload of the licensee. I'm talking about the obligation of the director, and I think that's a completely different matter. The director is already having a responsibility under subsection (4) to consult the public before,

"(a) issuing a licence for a new long-term care home...;

"(b) undertaking to issue a licence under section 98;

"(c) deciding whether or not to issue a new licence under section 101;

"(d) transferring a licence, or beds under a licence, under section 103; or

"(e) amending a licence to increase the number of beds under subsection 112(3)."

So asking the director, because that's who the onus falls on, to consult before a management contract is approved I don't think is a huge increased burden for the director.

Ms. Smith: I would just point out that the director's obligation to consult in section 104 is all around licensing. There is certainly generally some public concern and interest in licensing. We didn't hear from anyone from the public on their concern about management contracts.

We are entrenching in legislation the government's obligation to consult around licensing. I think I made that point earlier. We think it's very important to get that input, but I don't see the need to get that input around management contracts.

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

I will now ask, shall section 104 carry? Carried.

Shall section 105 carry? Carried.

We now move to section 106, government motion 252.

Ms. Smith: I move that section 106 of the bill be struck out and the following substituted:

"Notice

"106(1) A licensee that is a corporation shall notify the director in writing within 15 days of any change in the officers or directors of the corporation.

"Same

"(2) A licensee shall immediately notify the director in writing if the licensee has reason to believe that a person has gained a controlling interest in the licensee.

"Same, management contract

"(3) Where a long-term care home is managed by a person under a contract under section 109, the licensee of the home shall immediately notify the director in writing if the licensee has reason to believe that anything mentioned in subsection (1) or (2) has occurred with respect to the person."

This is around our clarifying the change-of-control question and ensuring that we have the appropriate ability to review any changes in control.

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

I will now ask, shall section 106, as amended, carry? Carried.

We move to section 107: government motion 253.

Ms. Smith: Again, this is around capturing the different corporate structures.

I move that section 107 of the bill be struck out and the following substituted:

"Gaining controlling interest

"107(1) A person that by any method gains a controlling interest in a licensee shall obtain the approval of the director.

"Director's approval

"(2) The approval by the director is subject to any restrictions by the minister under section 95 and subject to section 96 as those sections would apply with respect to the licensee if the person had already gained a controlling interest in the licensee.

"Attachment of conditions

"(3) The director may attach conditions to an approval.

"Regulations may provide for timing, process

"(4) The regulations may provide for when the approval of the director must be obtained and for the process for obtaining such approval."

Again, we're looking at capturing different corporate structures in order to be able to review them.

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

I will now call the vote. Shall section 107, as amended, carry? Carried.

We now come to section 108. Are there any comments? I will call the vote. Shall section 108 carry?

Ms. Smith: No.

The Chair: The section is not carried.

That moves us to section 109 and NDP motion 255.

Ms. Martel: This referenced a section around the director consulting the public that the government has already voted down, so I will withdraw it.

The Chair: It is withdrawn.

That moves us to PC motion 256.

Mrs. Witmer: I would withdraw that.

The Chair: PC motion 257.

Mrs. Witmer: I would withdraw that.

The Chair: We move to government motion 258.

Ms. Smith: Chair, could we just have a moment, please?

Sorry. I was planning on withdrawing 258, because I thought I was going to support 257. Mrs. Witmer just threw me off by withdrawing.

Mrs. Witmer: You've got it in your 258.

Ms. Smith: Yes, exactly.

I move that subsection 109(6) of the bill be amended by adding "materially" after "amended."

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

Shall section 109, as amended, carry? It is carried.

Moving now to section 110, NDP motion 259.

Ms. Martel: I move that subsection 110(1) of the bill be amended by striking out "The director" and substituting "Following public consultation, the director." The rest of that would read "may issue a temporary licence."

Section 104 talked about the obligation of public consultation by the director around licences, as was pointed out by Ms. Smith. So I think that in the case of temporary licences and the issuing of them, the director shall also have an obligation to consult the public. That's what this requirement would do. It was put forward by the Ontario Nurses' Association.

1110

Ms. Smith: We would just note that there are a number of different types of licences. Temporary licences are licences that can be issued up to five years. They're non-renewable. This is in fact to allow for the introduction of interim beds. The government has the ability, with the issuing of temporary licences, to move more quickly to address demand issues. Again I note that they are five-year, non-renewable. If something permanent was needed, then we would be looking at the section 104 requirements for consultation.

I think that public consultation on this particular provision would slow down the process and remove some of the flexibility that we are creating here to address issues that are emerging in communities.

The Chair: I will call the vote. Those in favour of 259? Those opposed? The motion is lost.

Government motion 260.

Ms. Smith: I move that paragraph 3 of subsection 110(2) of the bill be struck out and the following substituted:

"3. No interest in a temporary licence, including a beneficial interest, may be transferred."

This is just to clarify that these are temporary licences and that there is no intrinsic value with them.

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

I will ask, shall section 110, as amended, carry? It is carried.

That brings us to a new section, 110.1, government motion 261.

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

"Temporary emergency licences

"110.1(1) In circumstances provided for in the regulations where there is a temporary emergency, the director may issue a temporary emergency licence,

"(a) authorizing premises to be used as a long-term care home on a temporary basis; or

"(b) authorizing temporary additional beds at a long-term care home.

"Rules for temporary emergency licence

"(2) The following apply with respect to a temporary emergency licence:

"1. The licence may be revoked by the director at any time on the giving of the notice provided for in the licence, as well as being revocable under section 154.

"2. The licence may be issued for a term of no more than 60 days, and may not be renewed or reissued.

"3. No interest in a temporary emergency licence, including a beneficial interest, may be transferred.

"Provisions that do not apply

"(3) The following provisions do not apply with respect to a temporary emergency licence:

"1. Section 94.

"2. Section 95.

"3. Section 101.

"4. Section 103.

"5. Section 104.

"6. Any other provisions provided for in the regulations."

These are for the creation of emergency beds in the case of a fire, in the case of SARS, where we need to act quickly. It would only be for a maximum of 60 days. If there was a requirement for anything further, then we have our temporary beds, which we just addressed previously. This is to allow us the flexibility to be able to set up beds in emergency situations and not necessarily fulfill all of the obligations of having a residents' council and family council etc.

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

Section 111: We have government motion 262.

Ms. Smith: I move that section 111 of the bill be struck out and the following substituted:

"Short term authorizations

"111. In the circumstances provided for in the regulations, the director may authorize temporary additional

beds at a long-term care home for a single period of not more than 30 consecutive days."

This is our kind of final, absolute emergency. This is in a situation where we have someone in the community who is in a crisis situation and there is no one to care for them. We need to develop one bed in a home in order to address that crisis. It could happen within a 24-hour period and we need the flexibility to be able to do that. Again, I note that it's for not more than 30 days and it's a case-by-case situation.

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

I will now ask, shall section 111, as amended, carry? It is carried.

Moving to section 112, government motion 263.

Ms. Smith: I move that section 112 of the bill be amended by adding the following subsection:

"Extension in certain cases

"(2.1) Despite clause (2)(b), a licence may be amended under this section to extend its term where there is,

"(a) a substantial renovation of the home; or

"(b) a significant addition of beds to the home."

This is to allow us some flexibility where a home has a partial redevelopment or does a retrofit or is awarded new beds under a new RFP and is adding those beds to an existing structure. We want to be able to address those types of concerns as they arise.

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

Government motion 264.

Ms. Smith: I move that subsection 112(3) of the bill be amended by adding "or extend the term under subsection (2.1)" after "number of beds."

It's a follow-up to our previous, and it allows for amendments only in very limited circumstances.

The Chair: I'm calling the vote. Those in favour? Opposed? Carried.

I will now ask, shall section 112, as amended, carry? It is carried.

Moving to section 113, we have NDP motion 265.

Ms. Martel: I move that section 113 of the bill be struck out and the following substituted:

"First refusal for non-profits

"113(1) A competitive process may be applied after not-for-profit providers are given the first right of refusal for new licences.

"Restrictions on competitive process

"(2) The competitive process shall not be operated in such a manner as to disadvantage the establishment of non-profit or municipal long-term care homes or have a detrimental effect on the number of non-profit and municipal long-term care homes relative to for-profit homes in the area and in Ontario."

This follows in line with comments I made earlier around the minister's ability to determine whether new beds should be opened. At that point under section 94 I said it was in the public interest to open new not-for-profit and municipal homes, and that if the government was really committed to the not-for-profit and municipal sector, this was a concrete way to demonstrate that again in this section, because it talks about the issuing of licences. I recognize that it speaks more to the issue of approvals for long-term-care beds, but nonetheless, if the government is committed to this particular sector, not-for-profits and municipals, this is a very concrete way in the legislation to demonstrate that so that in fact those two groups—not-for-profits and municipal homes—would be given the right of first refusal under any competitive process, in fact would be given that before a competitive process would even begin.

The Chair: Discussion?

Ms. Smith: Thank you, Chair. Just to reiterate—I think we've already had this discussion—in the preamble, in our motion, we will be dealing with the not-for-profit question. Under clause 95(b), the minister is required to review the effect of any issuing of a licence on the balance between non-profit and for-profit homes. As well, we are restricting the ability of not-for-profits to transfer to for-profits under subsection 103(9).

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

I will now ask, shall section 113 carry? Carried.

Moving to section 114, government motion 266.

Ms. Smith: I move that section 114 of the bill be struck out and the following substituted:

"No appeal

"114(1) Decisions of the minister under this part in respect of sections 94 and 95 are within the sole discretion of the minister and are not subject to an appeal.

"Same, director

"(2) Decisions of the director under this part with respect to the following are within the sole discretion of the director and are not subject to an appeal:

"1. A decision to issue or not to issue a licence or an undertaking to issue a licence, including the giving of a notice under clause 101(1)(a) that no new licence will be issued.

"2. A decision with respect to the term of a licence, number of beds, or any other condition of a licence."

I would just note for clarity that there are still judicial review provisions and that we will be clarifying that through our motion number 319, but the judicial review provisions exist under section 176, and this section does not preclude judicial review.

1120

Mrs. Witmer: We have a subsequent motion that seeks to delete the entire section 114 of the bill. The concern we have is that currently those decisions are made solely by the minister and the director. There is no need to give any reason for those decisions, and that doesn't allow for any public scrutiny or any transparency in policy-making or decision-making. That was the reason we had asked for the removal of that section.

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

Prior to my calling the vote on section 114, I would ask Mrs. Witmer if she wishes to speak.

Mrs. Witmer: I've just spoken to why we were asking that section 114 be voted against.

The Chair: Shall section 114, as amended, carry? It is carried.

We are moving to section 115 and government motion 268.

Ms. Smith: I move that subsection 115(2) of the bill be amended by adding the following clause:

"(0.a) defining 'nursing care' for the purposes of subsection 93(1)."

This deals with the first section around where licences are required. It deals with which types of—I use the word advisedly—"facilities" we would be determining to be long-term-care homes or not. We want to be able to address what type of nursing care provided in a home would preclude them from being included in long-term care or include them in long-term care.

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

We are moving to government motion 269.

Ms. Smith: I move that clause 115(2)(c) of the bill be struck out and the following substituted:

"(c) governing the process of consulting the public for the purposes of section 104 and governing public meetings under that section, including the notices for such meetings."

Here we are simply broadening the regulation-making power to allow more detail about how our public meetings and public consultations would be held.

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

Shall section 115, as amended, carry? It is carried.

We are moving to section 116 and government motion 270.

Ms. Smith: I move that the definition of "northern municipality" in section 116 of the bill be struck out and the following substituted:

"'northern municipality' means a municipality in a territorial district as set out in regulations under the Territorial Division Act, 2002, but does not include the district municipality of Muskoka; ('municipalité du nord')"

This is to add some clarity. We've transferred the obligations with respect to municipal homes from previous legislation, and in doing that transfer there was some ambiguity around what we were referring to as northern municipalities, so this clarifies that.

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

Shall section 116, as amended, carry? It is carried.

Section 117 and NDP motion 271.

Ms. Martel: I move that subsection 117(1) of the bill be struck out and the following substituted:

"Municipal homes

"(1) Every municipality not in a territorial district shall establish and maintain one or more municipal homes and shall be supported by the ministry through provincial subsidies to do so."

The Chair: This motion is out of order.

I will now ask, shall section 117 carry? It is carried.

Shall sections 118 to 126, inclusive, carry?

Ms. Smith: We've withdrawn 272.

Ms. Martel: It was a good one, though.

The Chair: You didn't think I made an error, did you?

Interjections.

The Chair: So I will ask again, shall sections 118 to 126 carry? Carried.

That moves us to section 127, government motion 273.

Ms. Smith: I move that subsection 127(6) of the bill be struck out.

This is no longer needed, given that there are other provisions in the act that address this issue.

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

Shall section 127, as amended, carry? Carried.

Bringing us to section 128, NDP motion 274.

Ms. Martel: I move that subsection 128(1) of the bill be amended by adding "which approval shall be supported by a commitment for operating and capital funding" at the end.

The Chair: The motion is out of order.

That brings us, still on section 128, to PC motion 275.

Mrs. Witmer: I move that section 128 of the bill be amended by adding the following subsections:

"Funding commitment

"(1.1) The minister's approval of the municipal or joint home shall be supported by a commitment for operating and capital funding.

"Legal names

"(1.2) The legal names of municipal homes and their bed allocations shall be included in the regulations, or in a schedule to the regulations indicating that each home named has ownership of or a legal right to the bed allocation as listed."

The Chair: That is a money bill.

Mrs. Witmer: Right.

The Chair: It is out of order.

Mrs. Witmer: Right. I was waiting for you to tell me that.

The Chair: There was no look of surprise on your face. I'm sorry I was late getting to it.

Mrs. Witmer: We just want to get that message about funding across.

The Chair: I will now ask, shall section 128 carry? Carried.

That brings us to section 129, government motion 276.

Mr. Khalil Ramal (London–Fanshawe): I move that subsection 129(3) of the bill be amended by adding the following paragraph:

"10. Section 115 (Regulations)."

Ms. Smith: This is just to ensure that our regulations under section 115 apply to municipal and First Nations homes, which are homes that receive approvals.

The Chair: If there is no discussion, I will call the vote. Those in favour? Opposed? Carried.

Still on section 129, government motion 277.

Mrs. Linda Jeffrey (Brampton Centre): I move that subsection 129(5) of the bill be amended by striking out "modifications apply" in the portion before paragraph 1, and substituting "modification applies" and by striking out paragraph 2.

The Chair: Any discussion?

Ms. Smith: By striking out paragraph 2, we are actually allowing public consultations.

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

Shall section 129, as amended, carry? It is carried.

Shall sections 130 to 132, inclusive, carry? Carried.

Bringing us to section 133, government motion 278.

Mr. Leal: I move that section 133 of the bill be amended by adding the following subsection:

"Appeal

"(2) A decision of the director under subsection (1) may be appealed to the appeal board, and sections 159 and 161 to 168 apply to such an appeal with necessary modifications."

Ms. Smith: Mr. Chair, just to speak to that: We heard from our municipal homes some concern around a director's ability to make orders for renovations. They were requesting that we include an appeal process, and we have therefore included that appeal process through this motion.

1130

The Chair: No discussion? I will call the vote. Those in favour? Those opposed? It is carried on a 2 to 0 vote.

I will now ask, shall section 133, as amended, carry? It is carried.

Shall sections 134 to 137 carry? They are carried.

We now have a new section, section 137.1. NDP motion 279.

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

"Worker's rights protected

"137.1. Where the minister or director exercises any control over a home under this part, all previously existing rights of staff of the home under employment standards legislation or a collective agreement remain in place."

This particular section refers to when a municipal or joint home is taken over by the director, either under section 134 with the agreement of the municipalities who are involved or under section 135 where the director believes that the home is not being used or likely to be operated with competence, honesty and integrity. I want to ensure that under those circumstance where the director takes control, it's not the staff in the homes who, particularly in section 135, end up dealing with a situation where there may have been a question of the competence, honesty, integrity etc. of those who were running the operation.

The Chair: Any discussion?

Ms. Smith: Under this section, if an interim manager is required, they are sometimes required to make changes within the home in order to address the concerns. Again, interim managers are only introduced where there is a significant risk to residents. We believe that the interim manager should have the flexibility to address whatever concerns arise in the home during that very limited period of time when they are in the home.

Ms. Martel: Where in the legislation is the provision that sets out the limit of time that a director might be in the home?

Ms. Smith: There's a maximum period under subsection 137(3). Obviously, it's the government's intention to not be managing the homes directly, but to have the homes operated by the licensee. It's only in limited circumstances where there is a risk to the resident that an interim manager would be put into the home.

Ms. Martel: I understand perfectly the need to put someone else into the home if there is a risk to the residents, particularly if there are serious concerns about how the home is being run. What I don't understand is why that leads to a situation where front-line workers may end up losing some of their rights under a collective agreement or some of their rights under employment standards legislation as a result.

Ms. Smith: Can I have a moment, Chair?

The Chair: Yes.

Ms. Smith: I would just turn Ms. Martel's attention to section 155, where we say the protection of the workers' employment standards rights during an interim manager's occupation of a home—

Ms. Martel: Except if I look on that section, under subsection (7), it says:

"Limit on changes to terms and conditions

"(7) Changes to terms and conditions of employment or provisions of a collective agreement agreed to by the interim manager apply only with respect to the period" when the interim manager occupies the home.

So when the interim manager is in the home, changes can occur under that section as well, if I am reading this correctly. Now I've got two sections where changes could be made to collective agreements if an interim manager is in the home. To be fair, we also had a provision to delete that section.

Ms. Smith: Right, and again, as we discussed, an interim manager would only be going in in a situation where there is risk to the resident. We have to give the interim manager the ability to address that risk however that may need to be addressed. I understand that you have concerns about the collective agreement. However, we feel that there is a need in these very limited circumstances to be able to address those concerns in whatever way the interim manager feels is necessary.

We have put in the provisions with respect to termination pay and severance pay and ensuring that the workers who are affected have all of their rights protected. I do understand that you will have a problem with this section. However, we feel that it is required in order to ensure the safety of our residents in our homes.

Ms. Martel: I think that's the point. I really am quite worried about tying the safety of residents to people's collective agreements or any suggestion that you need this to let go of people because they're the ones who are

putting residents at risk. That's how I take this. There are a lot of good people doing a lot of good work in a lot of our homes. The tone of all of that just says to me that what the interim manager may well be looking for is to get rid of a number of employees; I don't know on what grounds and on what basis, but that's where this takes me. I have really serious concerns about moving in that direction, so I want to put that on the record.

Ms. Smith: We appreciate those concerns, but as I've said, we have in no way indicated that the tools that the interim manager needs in order to address the issues are specifically related to employees. We're just saying that we want to give them the flexibility to address whatever concerns arise, however they may arise. We do also note that the subsequent employer provisions are also in place for whatever happens after the interim manager, so it's just during a very specific, limited period of time that we would take these steps.

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

Moving to section 138, government motion 280.

Mr. Lou Rinaldi (Northumberland): I move that subsection 138(2) of the bill be amended by adding the following clause:

"(c.1) specifying times by which payments required under sections 124 and 125 must be made."

The Chair: Any discussion?

Ms. Smith: This is with respect to municipal homes that have levies. We understand that under previous legislation there were some timing requirements around that, and we want to give ourselves the ability to insert those through regulations if they're needed.

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

I will now ask, shall section 138, as amended, carry? It is carried, moving us to section 139 with PC motion 281.

Mrs. Witmer: I move that section 139 of the bill be amended by adding the following subsections:

"Ineligibility

"(4) The minister shall not appoint a person an inspector if the person is ineligible for appointment as an inspector as set out in the regulations.

"Regulations to govern

"(5) The regulations shall govern the qualifications, orientation, and training of inspectors appointed under this act.

"Duty

"(6) Inspectors appointed under this act have a duty to comply with the document known as the 'Code of Professionalism for Compliance Inspection and Enforcement Staff' when acting in the performance of their duties, or with other requirements that may be set out in the regulations."

This deals with the appointment of inspectors. Currently, it says only that the minister may appoint inspectors for the purposes of this act, but I think if you take a look at the tremendous power that's given to inspectors, it's absolutely necessary that we identify what the qualifications would be, as well as to set out their duty to comply with the code of professionalism for compliance, inspection and enforcement staff. That's the reason for this amendment.

The Chair: Discussion? Ms. Smith.

Ms. Smith: I would just note that in most other pieces of legislation there are no requirements under regulation for training for inspectors. Under the inspections, investigations and enforcement, training is a matter of individual ministry policy. Under the consumer protection, there is no specificity on training in the legislation, regs or policy, for their inspectors or investigators. Under OMAFRA, food safety and quality, all meat inspectors have a training course that's put out by OMAFRA, but there's nothing in the meat regulations to require it. Under our Nutrient Management Act, the Lieutenant Governor may make regulations, but there are none as of yet. With respect to milk inspection, the only requirement we could find was that under 87(1) of a regulation of the Milk Act, "Subject to subsection (2), no person other than the holder of a cream tester's certificate shall test for milk-fat content or supervise the testing of cream received at a plant." With respect to the Animals for Research Act, there's no requirement. Under the Ministry of the Environment, the Environmental Protection Act, the Ontario Water Resources Act, the Pesticides Act, the Safe Drinking Water Act, we do not have any requirements for training of officers within the acts or regulations. They do, as a matter of policy, set out some requirements. So I would suggest that this should be dealt with in policy and not in regulations, as is consistent with other legislation of the government.

1140

The Chair: Thank you. I thought only MPPs had no qualifications. Okay. I will call the vote. Those in favour? Those opposed? The motion is lost.

I will ask, shall section 139 carry? Carried.

Shall section 140 carry? Carried.

Moving to section 141, we have PC motion 282.

Mrs. Witmer: I move that subsection 141(1) of the bill be struck out and the following substituted:

"Annual inspections

"(1) Subject to subsections (1.1) and (2), the director may direct that every long-term care home be inspected at least once annually.

"Waiving inspection

"(1.1) Notwithstanding the authority to conduct annual inspections, the director may waive the requirement for an annual inspection, based on verifiable achievements of the long-term care home in producing and sustaining positive outcomes for residents."

This particular amendment is here on behalf of OANHSS, which has talked about the principles and the commitment to care and the need to balance the compliance, the inspection and the enforcement system with an incentive system. In fact, I think that's one of the things we heard about in the legislation: the need to focus on continuous quality improvement, best practices, incentives. They believe that they'd like to see incentive provisions incorporated into the bill to support excellence

within the homes, encourage excellence, and as a result this could be done by having less frequent inspections if indeed homes were excelling.

The Chair: Discussion?

Ms. Smith: We did hear from a number of people as well who were delighted that we were finally doing surprise annual inspections and wanted to see that included. You'll see in the following motion, 283, that the NDP are looking to ensure that we have annual inspections. Having heard the submissions of the various stakeholders and individuals, we agree that annual inspections continue to be required, and we have actually put in the legislation, through a different motion, recognition provisions for homes that are providing excellent care. So we feel that that will achieve some of the goals that have been set out by some of the stakeholders, and certainly our goal of acknowledging homes that are excelling, and we do feel that an annual inspection is in fact required.

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

We have NDP motion 283.

Ms. Martel: I move that section 141 of the bill be struck out and the following substituted:

"Annual inspection

"141. Every long-term care home shall be inspected at least once a year."

The provision in the legislation as it now stands allows for subsection (2), which provides for exemptions and says right now that, "The regulations may provide for less frequent inspections for certain classes of long-term care homes, including homes that are recognized as having a good record of compliance. " I'm happy if the government would find some other ways to recognize homes, but I don't think that should be in terms of around licensing. I think we should inspect every long-term-care home every year: That's it. If you want to acknowledge good compliance in a home that has best practices, find some other way to do that.

Ms. Smith: I said we agree.

Ms. Martel: Well, where's your amendment? You've got to drop that, then.

Interjection.

The Chair: This is additional—

Ms. Martel: No, just a clarification with the parliamentary assistant. Right now subsection 141(2) is still in existence, so unless your amendment somewhere else says that you're deleting subsection 141(2)—maybe it does and I just haven't seen it yet; sorry about that.

Ms. Smith: No, you're moving that section 141, the whole section, be struck out, and you're only putting in "Every long-term care home shall be inspected at least once a year."

Ms. Martel: Yes.

Ms. Smith: And we agree with that.

Ms. Martel: No, you talked about another amendment, so I wasn't sure—

Ms. Smith: No, I was talking about yours.

Ms. Martel: No, but you mentioned another amendment that was talking about recognizing—

Ms. Smith: Oh, recognizing—we did that yesterday.

Ms. Martel: Sorry about the confusion, Chair.

The Chair: I will call the vote. There has been a request for a recorded vote.

Ayes

Jeffrey, Leal, Martel, Ramal, Rinaldi, Smith.

The Chair: The motion is carried.

Shall section 141, as amended, carry? It is carried.

Moving to section 142, shall section 142 carry? Carried.

Now we have section 142.1 as a new section, with government motion 284.

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

"Meeting with councils

"142.1 Where an inspection is required under section 141, the inspector may meet with the residents' council or the family council, if requested or permitted to do so by the council."

We did refer to this earlier in our discussions about the residents' councils, family councils having some dialogue with the inspector, so this is the amendment that we had referred to earlier.

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

Moving to section 143, we have PC motion number 285.

Mrs. Witmer: I move that subsection 143(1) of the bill be struck out and the following substituted:

"Powers of entry

"(1) An inspector may at any reasonable time enter a long-term care home, or a joint building providing services to it, in order to conduct an inspection limited to the services provided in the government funded long-term care home."

What has been omitted here is—we still say "services provided," but in the original motion it talks about "in connection with." We want to ensure that this doesn't mean being able to enter into the homes that may be connected to the home or to a doctor or a physiotherapist's office, or even to a head office which may be there, so it restricts it to the services as opposed to the connected buildings.

The Chair: Further debate?

Ms. Smith: We believe that our section, as drafted, allows us the ability to review the home and those places operating in connection with the home and providing services to it, which allows us to inspect kitchens that are in a retirement home as opposed to a long-term-care home but that are shared by the long-term-care home. It allows us to demand the production of documents that are not being stored in the long-term-care home or in a joint building. I believe that the amendment as presented by Ms. Witmer is too limited. It does not address separate buildings. It does not address a situation where records or

other things are stored in different facilities or office space, and so we will not be supporting her amendment.

Ms. Martel: I think I'll make some comments now, because the next amendment that comes says that subsection (2) under "Dwellings" should be deleted entirely. I hear what the parliamentary assistant is saying, but if I read what is placed there, it doesn't reference those particular dwellings and it doesn't give a reference for dwellings at all. So right now, the legislation as currently drafted says, "(2) No inspector shall enter a place that is not in a long-term care home and that is being used as a dwelling, except with the consent of the occupier of the place or under the authority of a warrant."

1150

I move to delete that because, from my perspective, I had no clue what that meant and who the government was going to give authority or where an inspector was going to be able to go into. So as that is currently drafted, it's not limited to what you just talked about, and "dwelling" itself—I stand to be corrected—I don't think has been defined anywhere in the legislation either. So as I read that, that's pretty broad. I don't know who the "occupier of the place" is. I just think you need to have a step back from this and figure out if you can reword this so it's much clearer who you are talking about and where you are talking about, because as I read it, it's pretty open-ended.

Ms. Smith: I think I can actually give you the example of what you're looking for. We heard from Vala Monestime Belter from Algonquin Nursing Home in Mattawa. Vala is the director of the long-term-care home. It's a family-run home. I wouldn't be surprised—I don't know for sure, but I wouldn't be surprised—if Vala had a home office where she kept documents that were directly pertinent to the running of the long-term-care home. This would allow the inspector, with the consent of the occupier or with a warrant, to get access to those documents that are directly related to the management of the home.

Again, I would note that in the first section we are requiring that the inspector enter the home or a place operated in connection with the home during a reasonable time in order to conduct the inspection. In the second section, subsection (2), it is very limited by putting it in the negative: "(2) No inspector shall enter a place that is not in a long-term care home and that is being used as a dwelling, except with the consent...." So it's a fairly limited circumstance, and it's only with consent or on the authority of a warrant that we would be going anywhere that would not normally be used in connection with a home or as a long-term-care home.

Ms. Martel: I understand what you're trying to do, but as I read this, I don't see it restricted in that way. "No inspector shall enter a place that is not in a long-term care home and that is being used as a dwelling...." Well, whose dwelling, and where? It doesn't even say "dwelling of the operator who lives next door and who might hold records off-site that we need to see." You've got some vague reference to "dwelling" that's not defined anywhere else in the bill and doesn't even say "attached to a long-term care home" or "that is the home of the operator."

Ms. Smith: But I think you're losing the sense that you can't do that unless you have consent or you have a warrant. So it's only in very limited circumstances that an inspector could go into a dwelling: if they have consent or if they have a warrant. So what we're saying is that an inspector can't go into just any place. They have to have a warrant, and in order to get a warrant, they would have to justify why they wanted whatever documents or entry into whatever premises.

Ms. Martel: Why wouldn't you make it clear you're talking about someone who is linked to the long-term-care home in some way?

Ms. Smith: It's very difficult to limit it in that circumstance. Going back to my Vala circumstance, if Vala has her home office in her brother's house because her house is too small or whatever—I mean, how would you have us limit it? We are limiting it by saying that you can't go into a dwelling unless you have permission or you have a warrant, which is a pretty high threshold for gaining entry into a dwelling.

Ms. Martel: Okay.

Mrs. Witmer: Is there currently something within any of the acts that we're amalgamating here that speaks to this issue of powers of entry and that might be similar to this? What's currently—

Ms. Smith: You must have great recall, Mrs. Witmer. It is in the Nursing Homes Act, the same language.

Mrs. Witmer: The same language.

Ms. Smith: As well, this language, I'm advised by ministry counsel, is used in most inspection provisions in other legislation. This is the kind of language that they use.

Mrs. Witmer: So you're saying that both 143(1) and 143(2) are already written somewhere in—

Ms. Smith: Sorry. In the Nursing Homes Act. I would direct you to subsection 24(3): "No inspector shall enter a place that is not in a nursing home and that is being used as a dwelling, except with the consent of the occupier of the place or under the authority of a warrant issued under section 158 of the Provincial Offences Act." So it's right there.

Ms. Martel: If the Nursing Homes Act is out—because the next section is linked to this—does the next section also talk about "the operations on the premises"? I'm assuming that the language is following; maybe I shouldn't make that assumption. Sorry about that.

Ms. Smith: Sorry. What was your question?

Ms. Martel: If you take a look at the current act right now, under 144(1) it says an inspector conducting an inspection may inspect, clearly, "(i) the premises of the long-term care home or the premises of a place operated in connection with the home and providing services to it," and, "(ii) the operations on the premises."

I had an amendment that followed that also expressed concern about that "(ii) the operations on the premises": What was that and what did that mean?

Ms. Smith: Okay. In the Nursing Homes Act, it's actually much longer. We've kind of abridged it. But let me just tell you that the inspector,

"(a) may at all reasonable times enter and inspect a nursing home; and

"(b) may, if he or she has reasonable grounds to believe that records or other things pertaining to a nursing home are kept in a place that is not in the home, enter the place at all reasonable times in order to inspect such records and other things."

Then, "(3) No inspector shall enter a place that is not in a nursing home and that is being used as a dwelling, except with the consent of the occupier of the place"—so that's the section we talked about.

"(4) An inspector conducting an inspection under this section,

"(a) may inspect the premises of the nursing home and the operations on the premises;

"(b) may inspect a record or other things relevant....

"(c) may demand the production....

"(e) may conduct such examinations or tests as are reasonably necessary for the inspection...."

It goes on at some length, but those are the places they talk about.

Ms. Martel: Premises? Okay.

Ms. Smith: If you want, I can give you this during the lunch break and you can have a look.

Ms. Martel: Thanks, Chair.

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

That brings us to NDP motion 286.

Ms. Martel: In light of the discussion that we've just had, I will withdraw this amendment.

The Chair: Okay. I will now ask the question: Shall section 143 carry? It is carried.

It is close enough to 12 o'clock. With the committee's indulgence, this committee is recessed until 1 o'clock.

The committee recessed from 1157 to 1308.

The Chair: The committee is back in session. We are dealing next with PC motion 287.

Mrs. Witmer: Based on our previous discussion on this issue, I'm going to be withdrawing it.

The Chair: We move next, then, to NDP motion 288.

Ms. Martel: Based on the discussion we had earlier, I'm going to withdraw that motion as well.

The Chair: That brings us, then, to NDP motion 289.

Ms. Martel: This was a reference to operations on other premises, and given our discussion, I'll withdraw that.

The Chair: NDP motion 290. Ms. Martel.

Ms. Martel: This one I'm not going to withdraw.

I move that clause 144(1)(d) of the bill be amended by striking out "counsel" and substituting "a union representative or counsel."

This is in the section on inspection and what an inspector may do. There are a number of things he can do, and one is to "question a person, subject to the person's right to have counsel present during the questioning." The addition is, particularly in a long-term-care home, the right of that person to have their union representative, not just counsel, who may be a lawyer, which they may not be able to afford. It's providing for both opportunities.

Ms. Smith: We would argue that the inclusion of the word "counsel" does not preclude union counsel from representing, so we don't see the need to amend to include a union representative.

Ms. Martel: If I might, Mr. Chair, most unions don't have counsels in every home. Many unions, though, have a union representative in every home. In terms of the actual practical ability of an inspector to come in and a union being allowed to have a representative, in nine cases out of 10 they will not be able to have legal counsel there from the union because there is a limited number of people involved. They would be much more likely to have a union representative. So I think from a practical perspective it makes sense to allow them to at least have a union representative, because the likelihood of their having union counsel is not very likely.

The Chair: Any additional debate?

Ms. Smith: Yes. There's a feeling from Ms. Martel that she would like union representatives to be addressed by the inspector or to have a conversation with the inspector. There's no provision in this bill to preclude that from happening and obviously the inspector, through clause (d), may question a person, and that would be any person, subject to the person's right to have counsel. I think if we start putting requirements around the person's right to have a union representative and on and on, then we are in fact making this a more onerous process than if just the inspector is allowed to speak to anyone, as is allowed by clause (d).

Ms. Martel: I'm not trying to make it more onerous; I'm trying to make it more practical. In truth, if a staff person who was part of a union wanted to have counsel present because the inspector wanted to question them for whatever reason, their being able to exercise their ability to have counsel is unlikely. That's the only point I'm trying to make. I don't question that the inspector can talk to them and I don't question that they'll probably want to do that. The issue is, are we really putting in place a provision that would support a person's right to have counsel? I'm saying, in most cases, no. So the better way to get around that is to say "union representative," because that's far more likely to be what you're going to run into in a home.

The Chair: I'll call the vote. I'd ask for those in favour of the motion. Those opposed? The motion is lost.

We move next to NDP motion 291.

Ms. Martel: I move that subsection 144(1) of the bill be amended by adding the following clause:

"(d.1) may consult with non-management staff and their unions."

Right now there is no provision in the bill at all to consult with unions. I would like to make that a provision. Even though we've had a discussion about this, I would really encourage the government to consider supporting this. There are a number of things that can be done. I

think the ability of consulting with non-management staff and their unions, especially with respect to an inspection—what they feel about the home, what they see, what they think needs to be done—given that they are the front-line workers in that home, is an important provision to give them. We have said that residents' councils and family councils may, if they want to, talk to an inspector, and I'm trying to find a way to allow that same type of conversation to occur with a lot of the people who are actually providing the front-line services.

Ms. Smith: We would argue that "(d) may question a person" is broad enough to include anyone, and obviously would include front-line workers whether they're represented or not. We don't think that it would be appropriate to start delineating in any particular order which individuals in a home should be spoken to.

Ms. Martel: Chair, if I might.

You specifically, in other parts of the bill, reference family councils and residents' councils and their ability to approach and talk to an inspector. In this case, the same opportunity is not afforded to a union. It's up to the inspector to decide whether or not he may question a person, whoever that may be. In the other proposals that we put forward, I think the onus is the reverse, that the family council and the residents' council can ask for that and it will be done. There's not the same opportunity afforded to front-line staff and I think there should be.

Ms. Smith: And I would just point out that the inspector may meet with the family council or the residents' council. The language is "may." In fact, they would not fall under the definition of "person" under the legislation because they are specific entities. The "person" in clause (d) is broad enough to include any worker in the home.

Ms. Martel: I'm trying to flip through the amendments, because I'm sure it says "may," but I think it also says "upon the request." I can't find the amendments quickly, but if I remember the ones we passed this morning, the provision was stronger in that, to say that if the family and the residents' council wanted to do that, then they would be afforded that opportunity. It's not the same thing here. That's not what is happening at all.

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

Still on 144, PC motion 292.

Mrs. Witmer: I move that the definition of "record" in subsection 144(8) of the bill be struck out and the following substituted:

'"record' means any document or record of information, in any form, including a record of personal health information within the meaning of the Personal Health Information Protection Act, 2004, but does not include information that is collected by or prepared for a quality of care committee within the meaning of the Quality of Care Information Protection Act, 2004,

"(a) for the sole or primary purpose of assisting the quality of care committee in carrying out its functions, or

"(b) that relates solely or primarily to any activity that the quality of care committee carries on as part of its functions."

This deals with the definition of "record." It's believed, and this amendment speaks to it, that the definition of "record" should incorporate the exclusions that are currently set out in the Quality of Care Information Protection Act. I understand that the long-term-care providers were successful in securing inclusion as prescribed entities under the QCIPA in an attempt to create a health-system-wide approach to the collection, use and disclosure of quality-of-care information by the quality-of-care committee of the home as established under QCIPA. That's the reason for the amendment.

The Chair: Any additional discussion on this motion?

Ms. Smith: Yes. I believe this amendment is unnecessary. The proposed act does not override QCIPA, so there's no need to exclude QCIPA from the definition of "record." As well, the exclusion that's included in the latter part of this amendment is not complete. So there are documents that are not included in this. Because QCIPA already applies, I don't think it's necessary to include this.

Mrs. Witmer: If that is indeed the case, I'd be prepared to withdraw it.

The Chair: Amendment 292 is withdrawn. That concludes section 144.

Shall section 144 carry? Carried.

Shall section 145 carry? Carried.

We now move to section 146, NDP motion 293.

Ms. Martel: I move that subsection 146(2) of the bill be amended by adding "and to representatives of the non-management staff and their unions" at the end.

Section 146 references the inspection report and who is entitled to receive a copy of it. The current provision says that an inspector will prepare a report and give a copy of it to the licensee, to the residents' council and to the family council, if any—if the family council exists in that home. I'm suggesting that we amend it to ensure that a copy from the inspector is also given to the union and their representatives. These are the front-line workers. If there are changes that need to be made, if there are things that have to be done, they should be able to see that directly in the report without having to be briefed on it by the inspector. Since we're already giving copies to the residents' council and the family council, I think it makes great sense to give a copy to the people who are actually doing the front-line work.

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Ms. Smith: These inspection reports are posted in the home as required in the posting provisions. They are also posted on the Web and are publicly available. We have looked at some other pieces of legislation where inspections are done, and it is my information at this point that there is no other requirement under legislation for inspectors' reports to be provided to non-management staff and their unions. So I would say that this is unnecessary given that there are other avenues to obtain copies of the reports.

Ms. Martel: If it's unnecessary, I'm wondering why you have a provision here that says that the inspector is going to give it to the residents' council and the family council. I guess they could go look at the wall too and see where it's posted, but that's not what you're doing and I agree with that. You're talking about the people who are delivering the front-line care in the homes who may be the subject of the inspection, in terms of people making allegations or raising concerns about the appropriateness of care. If you are going to give it to two groups already in the home, I don't see what the problem is with giving it to the folks who are actually doing the work. I'm sorry.

Ms. Smith: I think we'll continue to agree to disagree on this one. The homes are there for the residents. That's why we have them, and it's important that they get that information. The unions and workers can obtain the information as it's posted.

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

Subsection 146(3), PC motion 294.

Mrs. Witmer: I move that subsection 146(3) of the bill be amended by striking out "shall" and substituting "may."

The current wording is that if the inspector finds that the licensee has not complied with the requirement under this act, the inspector "shall"—I'm changing that to "may"—document the non-compliance. The approach as it is worded currently would require documentation of each and every area of non-compliance, no matter how small and despite the potential immediate rectification by homes. This approach, I am told, could translate into staff time being spent on some relatively trivial matters—we have heard about some of those examples—with less time left to deal with the truly significant, hands-on personal care issues where staff should be focusing their attention. I think we need to take a look at setting out appropriate measures to manage and make improvements where performance does not meet the provincial standards and not simply ticket every non-compliance. This wording would compel inspectors to document all areas of non-compliance. The suggestion here is that we need to take a look at moving away from what some people in their presentations referred to as a shame-and-blame approach, but recognize that through interactions amongst staff, care systems, operational policies and procedures we do address the root problems and solutions are developed.

Ms. Smith: Over the last three years I've heard a lot about inconsistency in the compliance and enforcement. What we're doing through this legislation is ensuring that we have consistency across the province. We can only achieve that consistency if we have consistent reporting of non-compliance. Allowing for discretion of the inspectors does not allow for consistency. We think that it's important to achieve that kind of consistency and to allow for all of the homes to understand what the expectations are that are to be met.

I would just note that in Mrs. Witmer's discussion she noted that this would lead to documentation about every little thing. But this is documentation by the inspector. This is not the spilled-juice example that some of the stakeholder groups kept using, which is really just a red herring. This is about an inspector coming into a home and finding non-compliance and their documentation, not staff documentation. We think it's very important to have consistency in our compliance in all of our homes to ensure that they are all meeting the standards. I would note and refer for the committee that a US review on nursing home quality in 2003 noted under-reporting in a substantial number of homes for immediate sanctions, and that was because documentation was not being kept by their inspectors on a consistent basis. So we feel that this is absolutely imperative to ensure the consistency and integrity of the compliance and enforcement system.

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

That brings us to NDP motion 295.

Ms. Martel: There have been amendments that have already made the posting of an inspection report in the home a mandated responsibility, so I'll withdraw this amendment.

Ms. Smith: I would just note as well that under subsection 77(1), we do note that it has to be posted in a conspicuous place. That was part of yours; it was already addressed.

The Chair: Okay. I will ask the question: Shall section 146 carry? It is carried.

Shall sections 147 and 148 carry? Carried.

Section 149 is started with NDP motion 296.

Ms. Martel: I move that section 149 of the bill be amended by adding the following subsections:

"Copies to certain groups

"(2) The inspector shall provide a copy of everything done under subsection (1) to the residents' council of the home, the family council and to the non-management staff of the home and their unions.

"Appeal

"(3) Anybody mentioned in subsection (2) may appeal to the director if the inspector has taken any action other than issuing an order or referring the matter to the director."

This follows from an earlier discussion we had about who should get the inspection reports under this particular section. It's an issue of enforcement of orders and what is being done. I continue to believe that if we're going to get at that information, that information should be given to the relevant parties in the home, including workers and their unions, resident councils, and family councils as well.

The Chair: Debate?

Ms. Smith: Yes. We do have a requirement that the inspector provide the annual inspection report both to the family councils and the residents' councils, as Ms. Martel has noted, as well as that it be posted. What Ms. Martel is talking about now is providing to these groups any written notification and written requests to prepare a plan of correction or an order in the compliance provisions. We didn't hear from residents' or family councils that

they wanted to receive this. We did hear that they wanted to receive the annual inspection report and they are, so I don't know where this request is coming from. I think it's inappropriate. Most of these things are included in the final inspection report that's written, but to go into the detail of every single issuing of a written notification or written request to prepare a written plan or an order would be far too detailed and require far too much work on behalf of the inspector, who in this case is compiling a final inspection report as well.

Ms. Martel: I'm sorry to hear that you think it's inappropriate. It was given to us by the Ontario Nurses' Association. I'm sure they'll feel badly that you think it was an inappropriate request to make. I don't think it's inappropriate at all. You're talking about the action that an inspector is going to take if there's non-compliance. We're upping the ante because now we've got a situation where the licensee is not complying with the requirement under the act or with an order. So I think it's even more incumbent, when that is the situation—where the licensee is not even complying—that the people who make the home their home, who are represented by family councils, residents' councils and people who work there, be allowed to know what that is, how serious it is and question the licensee as to why it is they don't think they have to comply. I think the only way you're going to get that is if it's given to some other people other than just a transaction, so to speak, between the inspector and the licensee.

Ms. Smith: They are given a copy of the final report, which includes any findings of non-compliance for the family council and residents' council. I think it's a bit presumptuous of the Ontario Nurses' Association to presume that the family councils and residents' councils wanted the details of all of these written orders and notifications as well as wanting a level of appeal that they never requested. We never heard from any of those groups wanting that.

Ms. Martel: Even if we weren't speaking for them—and if you think they shouldn't have been speaking for them—they certainly have a right to speak for themselves, which is why they said they would think that this should be available to the non-management staff of the homes and their unions, and I think so too.

1330

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

PC motion 297.

Mrs. Witmer: I move that section 149 of the bill be struck out and the following substituted:

"Actions by inspector if non-compliance found

"149 If an inspector finds that a licensee has not complied with a requirement under this act, the inspector shall issue a written notification to the licensee requiring,

"(a) voluntary compliance; or

"(b) a written plan of correction for achieving compliance to be implemented voluntarily."

I should say up front that in order for this amendment to be accepted, we'd really have to get acceptance for 149, 150, 151, 152 and 153, because the attempt that is being made here is to set out staged consequences to non-compliance that will recognize what I think you would have to acknowledge has been the willingness, historically, of the majority of long-term-care homes to comply with the ministry requirements and the ability of the ministry to compel recalcitrant licensees to comply through increasing sanctions. The revocation of the licence remains the final sanction.

What we have here is a recommendation by the Ontario Long Term Care Association that is proposing the reordering of these sections to reflect the staging that would result in the following graduated process: voluntary compliance; failure to comply results in an order to undertake or refrain from activity if there is an immediate risk of harm to residents or a second opportunity to voluntarily comply; failure to comply with the step above then results in closure of the home to admissions; if compliance has still not yet occurred, the director can make a mandatory management order; and the last resort is revocation.

This is a belief that this type of approach would be more successful in meeting the above goals than a process based on open-ended orders forcing homes to do anything based on the opinion of the person making the order.

That's the rationale for this.

Ms. Smith: I'm happy to speak to 149 through 153 or motions 297 to 301 at the same time. The proposals that have been put forward by the OLTCA and Ms. Witmer are in fact watering down what exists presently. We've heard in certain situations that people are concerned about enforcement and compliance and the ability to move quickly to address problems in homes. The regime that we have set out in the legislation, as is presently drafted, allows the ministry more tools to deal expeditiously with problems as they arise, to deal with problems as they arise both quickly and accurately.

The regime that Ms. Witmer is setting out would require us to go through step 1, step 2, step 3, step 4, despite the fact that the compliance issue may be of a serious nature and require us to move directly to step 4. It would also require us to go back to step 1. If we felt that at step 3 we hadn't succeeded, we'd have to start over again. That is just creating chaos in a compliance system.

We've created both a pyramid and a grid in order to ensure that we are able to achieve the compliance that we need in all of our homes. We are able to move forward with different types of tools and different types of mechanisms to ensure compliance and to ensure that our homes are able to comply.

Ms. Witmer is as well, in some cases, setting a high threshold by setting out in her clause 150(2)(b) that the inspector has to reasonably believe that there is an immediate risk of harm to residents before some actions are taken. We believe that in our regime we've set out the appropriate risks that are necessary before certain actions are taken. We are trying to give our compliance advisers and our inspectors the tools that they need in order to address problems as they arise.

I would also note that in her motion 300 she is re-introducing the notion of cease admissions. We have actually put that in the admissions section where we think it's more appropriately dealt with, not as a compliance issue but as a risk to our residents and potential residents.

With respect to all of the motions that she has put forward, I would suggest that they don't do the job. We've had some concerns about the ability to manage in the past. We want to give ourselves the tools to better address concerns in the future and we feel that our legislation does just that.

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

Shall section 149 carry? It is carried.

Section 150: PC motion 298.

Mrs. Witmer: As I say, they all have to go together. So I would withdraw section 150, but I think we need to recognize that this section would have allowed for immediate compliance if there's reasonable risk.

The Chair: That brings us, then, to NDP motion 299.

Ms. Martel: There is a difference in the issues around when the order will be made, so I'm not going to withdraw this. I'll read it into the record.

"Compliance

"150(1) An inspector or the director may order a licensee to do anything, or to refrain from doing anything, to achieve compliance with a requirement under this act, provided it does not jeopardize compliance with another act or regulation.

"When may be made

"(2) An order may only be made under this section if,

"(a) the director issued a written notification to the licensee under paragraph 1 of section 149;

"(b) a plan of correction under paragraph 2 of section 149 failed to achieve compliance within a reasonable time; or

"(c) there is an immediate risk of harm to a resident of the home.

"Restrictions

"(3) No inspector or the director shall make an order that,

"(a) is not provided for in funding provided by the ministry under section 88;

"(b) requires structural repairs or alterations to a building, structure or premise that was constructed in accordance with the ministry 1992 or 1998 design standards for long-term care homes; or

"(c) overturns the care ordered by a health care professional as defined in the Regulated Health Professions Act, 1991."

The section that is different than what Mrs. Witmer put in follows through when an order will be made, which makes it clear that that can happen when there is immediate risk of harm to the resident of the home so that the director can move right to that. We're also making it clear that the director has the opportunity or the obligation to do that and then setting out in that section when that can happen. So it is very clear that if there is immediate risk of harm to the resident, then the order will be made.

Ms. Smith: All of the stuff I said before, and, with respect to your restrictions under subsection (3), you are advising that no inspector or director shall make an order that "requires structural repairs or alterations to a building" in conjunction with, I believe you meant, the 1972 standards, not 1992. But given that, what you're saying is that if there is water dripping on the bed of a resident, an inspector cannot make an order that that be repaired because that would require a structural repair or alteration and they're not allowed to issue those orders under this provision, as it's written.

Ms. Martel: Except, (c) says "there is an immediate risk of harm to a resident of the home," and there would be in that case.

Ms. Smith: There are other structural issues that may not be "immediate risk of harm" but that need to be addressed.

The other question I have for you is, in 150(1) you say, "provided it does not jeopardize compliance with another act or regulation." I'm unclear as to what that would mean.

Ms. Martel: Long-term-care homes operate under other provisions from other acts as well. The idea was that, provided it wouldn't put them into jeopardy because they have obligations under another act, then the director or the inspector could do just that. It was to try to avoid, where there may be two competing sets of legislation, that failure to comply under another act was going to jeopardize the home or the licensee.

Ms. Smith: Call the question.

1340

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

Shall section 150 carry? Carried.

Section 151. That brings us to PC motion 300.

Mrs. Witmer: Again, this is part of a package; I would withdraw that.

The Chair: It is withdrawn.

Shall section 151 carry? Carried.

That moves us to section 152 and PC motion 301.

Mrs. Witmer: Again, I would withdraw that because they were all interconnected.

The Chair: Thank you.

Shall section 152 carry? Carried.

Shall section 153 carry? Carried.

Moving to section 154, we have government motion 302.

Ms. Smith: I move that the portion of clause 154(2)(c) before subclause (i) and clause 154(2)(e) of the bill be struck out and the following substituted:

"(c) the conduct of the licensee, a person with a controlling interest in the licensee or, where the licensee is a corporation, the conduct of the officers or directors, affords reasonable grounds to believe,

"(e) a person has gained a controlling interest in the licensee without the approval of the director, contrary to

section 107, or a condition of such an approval has been breached."

This is part of our ongoing amendments to provide some clarity around controlling interest.

The Chair: Any discussion or debate? I'll call the vote. Those in favour? Those opposed? It is carried.

Government motion 303.

Ms. Smith: I move that subsection 154(4) of the bill be amended by striking out "who wish to be relocated."

This is again in order to provide clarity, because if we have an interim manager in place and we are looking at revoking the licence, we would be relocating everyone.

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

I will ask the question: Shall section 154, as amended, carry? It is carried.

We are moving to section 155 and NDP motion 304.

Ms. Martel: I move that subsection 155(7) of the bill be struck out.

This follows from an amendment that I moved earlier, 137(1), which talked about protecting workers' rights when a minister or a director exercises control over a home in terms of having an interim manager. I would like this particular section deleted because it continues on in the same vein as other government amendments which say that during the time that an interim manager occupies or operates a home, changes to the terms and conditions of employment under a collective agreement can be changed. That should also, I suspect, mean that changes under the Employment Standards Act could be made. We had a broad discussion on that, but the only other point I'd make is that because this was raised as a concern around residents and their safety, I'm just wondering why the changes apply only to those people who have collective agreements. If the individual in charge, who might be causing the grief and causing the concern to safety, is someone outside of a union and has a contract with a home, I don't see references to changing those terms and conditions, if necessary, in order to fix the problem. So I'm looking at this and I continue to feel that it's one-sided in terms of who we think the problem is and how we think we're going to manage it.

Let me give you another example. If you've got a home that's dealing with a contracted-out food service agency and you've got significant problems with them and what's going on in the home, I don't see provisions to change that contract in order to rectify that situation.

I wish the government, in looking at this, if they're really concerned about safety, and I trust that they are, would be looking at not just what would be required to do something about unionized staff, but other folks in the home who are not unionized or who operate on a contract who may well be the source of the problem as well.

The Chair: Ms. Smith?

Ms. Smith: Under section 6, "1. The interim manager has all of the powers of the licensee to occupy, manage, operate and administer the home," which would allow them to enter into or end any contract that they have with any independent operator, any contractor or with non-unionized employees. So I don't see where Ms. Martel's concerns are around non-unionized when they have the same ability as a licensee would have to manage their staff.

Ms. Martel: Can I ask where the reference is to contracts, like outside the home?

Ms. Smith: "…occupy, manage, operate and administer the home."

Ms. Martel: No, if they're contracting out services.

Ms. Smith: That would be part of the managing or operating the home. They have all the powers of the licensee. If a licensee has a contract with a third party contractor, then the interim manager has all the powers of the licensee, who steps into the place of the licensee to deal with any contract.

Ms. Martel: Is this 6(1)?

Ms. Smith: Yes, 6(1).

Ms. Martel: Okay, in that particular section, they're going to continue to get termination and pay, so there won't be a change to employment standards. Does that provision then continue for staff who are unionized?

Ms. Smith: I'm sorry. Can you repeat that?

Ms. Martel: If you look at section 6, it says, "[T]he interim manager may pay an employee whose employment is continued under subsection (2) any other termination pay or severance pay and entitlements the employee may be entitled to if the interim manager lays off the employee." They're going to be entitled to severance pay and termination. Does that carry over into the next section? If you're letting unionized staff go, do they get severance and termination pay as well?

Ms. Smith: I would point out first off that I think you've answered your own question as far as employment contracts by pointing to subsection (6), so that's good.

Subsection (7) says, "Changes to terms and conditions of employment or provisions of a collective agreement agreed to by the interim manager...." So they would have to be agreed to by the union if there were changes to a collective agreement.

Ms. Martel: No. Doesn't this section say that there will be no changes outside of the period of time when the interim manger occupies; the changes will be during the term that he or she is managing on an interim basis?

Ms. Smith: And they're agreed to. The changes are agreed to in the period during which the interim manager occupies or operates, yes.

Ms. Martel: Agreed to by the interim manager.

Ms. Smith: You have to agree with somebody.

Ms. Martel: Yes, but where's the union? "Agreed to by the interim manager."

Ms. Smith: They would be the ones on the other side of a collective agreement, I would think.

Ms. Martel: My apologies. I thought this one flowed also from 137(1), because it was referenced by you as well as being the other area where this would apply. My concern has been to make sure that this doesn't all fall on the back of unionized employees. So if I'm wrong about that section, I apologize.

I would withdraw the amendment.

The Chair: Okay. The amendment is withdrawn.

Shall section 155 carry? Carried.

Section 156, PC motion 305.

Mrs. Witmer: I move that section 156 of the bill be amended in the section before clause (a) by striking out "150 to 154" and substituting "153 or 154."

Since the recommendations for amendments for sections 149 to 154 were not considered by the government, by making this change here at this time—as it's worded right now, I understand that this section currently removes a fundamental principle of defence, and it is reasonable not to have recourse to a defence of due diligence if the ministry is issuing an order for mandatory management or revocation of a licence. And if the graduated sanctions triangle is not amended, as it was not amended in sections 149 to 154, a due-diligence defence is required as it relates to compliance orders, work and activity orders, and funding being returned. So that's why I've introduced this particular motion.

1350

The Chair: Any discussion?

Ms. Smith: We think it's important that our licensees comply with the standards as we set out. Currently, in the service agreements between the ministry and the licensee, we require our licensees to comply with the long-term-care home manual, which contains most of the current standards. The agreement previously said "take reasonable steps" but now says "shall comply." So what we're requiring is the same as what presently exists. We do note that there is an appeal provision available if a licensee objects to the actions taken. The requirement is that they comply with our standards. We actually don't want to enter into a prolonged discussion of what reasonable steps may or may not have been taken; we want to ensure that our standards are met.

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

Still on 156, NDP motion 306.

Ms. Martel: I'd like to speak to this too, so I'm going to just introduce it.

I move that section 156 of the bill be struck out and the following substituted:

"Reasonableness

"156(1) Subject to subsection (2), the authority to make an order under sections 150 to 154 against a licensee who has not complied with a requirement under this act shall not be exercised if there is evidence that,

"(a) the licensee took all reasonable steps to prevent the non-compliance; or

"(b) at the time of the non-compliance, the licensee had an honest and reasonable belief in a state of facts that, if true, would have resulted in there not being any non-compliance.

"Immediate risk, etc

"(2) This section does not prevent an order where there is immediate risk of harm to a resident of the home, or the issuance of a written notification or written request to the licensee under paragraph 1 of section 149."

The concern I had with the way the current motion is worded in the bill really comes from the top section of 156, where it says, "The authority to make an order under sections 150 to 154 against a licensee who has not complied with a requirement under this act may be exercised whether or not...." I don't understand why the government is using "whether or not," especially if it's clear that the licensee took all reasonable steps and at the time they had an honest and reasonable belief in that fact. I just was concerned about the "whether or not" and why, if they had done everything that they could have or should have, that wouldn't be acceptable.

Ms. Smith: Again, it's part of a compliance regime where we expect them to meet our standards. Whether or not they've taken reasonable steps would lead to a whole discussion around that. What we want to be able to do is to enforce our standards through this compliance regime. They do have the ability to appeal if they feel that they should not receive that type of penalty. But if there is non-compliance we want to be able to address it, and that's what this regime allows us to do.

Ms. Martel: And you don't feel that it's addressed in the section that was different from Ms. Witmer's that talks about immediate risk?

Ms. Smith: No.

Ms. Martel: Okay.

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

I will ask, shall section 156 carry? Carried.

I will ask, shall sections 157 to 159 carry? Carried.

That brings us to section 160, with government motion 307.

Ms. Smith: I move that subsection 160(2) of the bill be amended by striking out "14" and substituting "28."

We heard from OANHSS and a number of the other stakeholders that they needed more time in order to address the request for review or an appeal procedure, and because, in the case of municipal homes in particular, the management boards often only meet on a monthly basis, we felt that 28 days was more appropriate. So we've heard that request, and we are acquiescing.

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

Government motion number 308.

Ms. Smith: I move that subsection 160(6) of the bill be amended by striking out "amended" at the end and substituting "altered."

Again, this is just for clarity. It's my understanding that the director's decisions are sometimes altered but not amended.

The Chair: I'm calling the vote. Those in favour? Opposed? Carried.

Government motion 309.

Ms. Smith: I move that subsection 160(7) of the bill be amended by striking out "14" wherever it appears, and substituting in each case "28."

The Chair: Those in favour? Those opposed? It is carried.

Shall section 160, as amended, carry? It is carried.

Moving to section 161, shall section 161 carry? Carried.

Moving to new section 161.1, NDP motion 310.

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

"Other parties

"161.1 The residents' council of the long-term care home, the family council, and the non-management staff of the home and their unions are parties to any request for review or appeal under section 160 or 161."

I've spoken at some length about participation by unions and their representatives, and my feeling is the same on this issue as well.

Ms. Smith: For consistency, my position is the same on this one as well.

The Chair: No other discussion or debate? Those in favour of the motion? Those opposed? The motion is lost.

Section 162, government motion 311.

Ms. Smith: I move that section 162 of the bill be amended by striking out "15" and substituting "28."

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

Shall section 162, as amended, carry? Carried.

Shall sections 163 to 167, inclusive, carry? They are carried.

That brings us to section 168, PC motion 312.

Mrs. Witmer: I move that section 168 of the bill be amended by adding "that applies to an order under section 153 and 154" at the end.

This section, as currently worded, absolves the ministry of any accountability for the publicly funded LTC homes sector. It is reasonable not to have recourse to a defence of sufficiency of funding if the ministry is issuing an order for mandatory management or revocation of a licence.

Ms. Smith: I would just repeat what we've said around compliance and enforcement. I think if the sufficiency of funding is not a consideration in these circumstances, it shouldn't be a consideration in imposing lesser penalties. This does not reflect the government's support of the system but in fact would be used by a home in its own determination of where it has put its funding.

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

Prior to calling for the vote on section 168, I will open the floor to debate.

1400

Mrs. Witmer: I also had a motion that we would recommend voting against the entire section. OANHSS had suggested that this section should be deleted. They point out that the entire bill is a very complex piece of legislation. It has very substantial and far-reaching implications, and I think we're seeing a little bit of that today; we certainly did when we were out participating in hearings. It establishes many new requirements, many new standards, and it does place substantial new obligations on the homes without any responsibility or accountability on the part of the government.

At the same time, there really were very serious concerns expressed to us by the people who appeared in front of us that there was no assurance of adequate funding for homes to comply with the many requirements of the bill. There was concern that there would be perhaps non-compliance because of a lack of appropriate resources. This was a concern of OANHSS. It was RPNAO who also recommended the removal of section 168, which prohibits inadequacy of funding as a defence under part IX. There were grave concerns about the lack of funding.

Ms. Martel: Right after Mrs. Witmer's motion is ours, which also recommends voting against section 168. That specific section says, "The sufficiency of the funding provided to a licensee from any source shall not be considered in any review or appeal under this part." My sense of it would be that a party, if it is allowed to proceed to an appeal board and if it is also allowed to appeal to the Divisional Court, which it appears to be able to do under other sections within this particular set of provisions, should be allowed to make its case, and the appeal board or the Divisional Court would rule from there. But I think that given that we are giving them the opportunity to appeal not just to one level but to various levels, including the Divisional Court, that case should be heard and the appeal board or the Divisional Court would make the decision as to whether or not there was sufficient funding on that basis, whether or not what has happened was the result of insufficient funding. But it would be up to them to make that determination.

Ms. Smith: Just to confirm, under this sanction scheme, the licensee can appeal. The appeals from the inspector go to the director; the appeals from the director go to HSARB. The licensee's right to appeal is not in any way being restricted, and they can appeal on the basis of fact, law, or law and fact.

Just to address the final point, I do believe that it would be inappropriate for HSARB to be placed in a position of determining whether or not funding provided to the licensee was sufficient. I don't think that would be their jurisdiction. We will obviously be supporting section 168.

The Chair: I'm going to call the vote. Shall section 168 carry? It is carried.

New section, 168.1: PC motion 315.

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

"Incentives

"168.1 The director has the authority to provide incentives to recognized well-run long-term care homes."

There is very little in this bill to deal with rewarding people or providing incentives to make them provide the best environment within their home to meet the needs of the residents. We heard from OANHSS, we heard from the regional municipality of Waterloo, we heard from the Catholic Health Association of Ontario and we heard from the Alzheimer's Society about the need to provide some incentives. They said that there was a need to support an environment that encouraged innovation,

excellence, with evaluation and monitoring focused on outcomes as opposed to what is contained in this bill, which really does provide for a tremendous amount of enforcement and compliance. They believe that the type of environment with incentives would achieve more than the highly restrictive public policies that we're seeing within this bill. We heard it from the presenters I've just talked about. As I say, they feel that instead of this highly regulated approach, they believe that there should be more focus on providing incentives.

The Alzheimer Society said this: "Bill 140 is based on a belief that inadequate care can be remedied by inspection and enforcement, but we contend that excellent care can only be encouraged through positive incentives. The bill needs to give more prominence to its provisions for the minister to recognize and reward excellence in all aspects of training, programming and management of long-term-care homes." That's why this would allow the director to actually have the authority to provide incentives to recognize well-run long-term-care homes.

Ms. Smith: We also heard from the Ontario Association of CCACs, the Don Mills Foundation for Seniors, the Sherwood Park Manor and, quite eloquently, the Belvedere Heights Home for the Aged in Parry Sound. I would ask Ms. Witmer if she would look at 316, which is the government's amendment. I actually believe that ours, because it provides for regulation-making authority to outline what incentives would be and we also recognize long-term-care homes with an excellent record of compliance with the requirements under the act, is more fulsome and addresses the issue more clearly. I think it's a bit difficult to determine what is a well-run long-term-care home as it's written in motion 315, so I would urge you to consider 316.

Mrs. Witmer: What I don't see in 316 is, she or he, the director, can recognize long-term-care homes, but what are they going to do about it? How are they going to recognize them? It doesn't speak to providing incentives. What are they going to do other than recognize them?

Ms. Smith: Would you like to articulate what kind of incentives you're proposing?

Mrs. Witmer: Well, what is it that you are proposing?

Ms. Smith: We're proposing that in regulation we determine how we recognize excellent records of compliance.

Mrs. Witmer: So what's going to be different for these people who are recognized to have a clean record or an excellent record of compliance?

Ms. Smith: We'll be determining through regulation how we recognize them.

Mrs. Witmer: Would you have some suggestion as to how that—

Ms. Smith: Well, we certainly heard from Belvedere Heights and from some of the other homes that they would like to see a recognition of the high level of service delivery that they're providing, so some kind of gold-star recognition of our homes that have been without any non-compliance for a certain number of years. We'd be setting out that kind of thing in regulation.

Mrs. Witmer: So you're saying it would be more in the way of an award program?

Ms. Smith: That's what I anticipate, but again, we haven't started the deliberations on that particular regulation, so we're open to suggestions and ideas. Certainly, we did ask along the way, when homes presented, what they would suggest as a way of recognizing, and we did get some suggestions, but we're open to others.

Mrs. Witmer: Well, do you know what? I think it is really important. I do think there were a lot of concerns expressed about the highly regulated nature of this particular piece of legislation. Although there are certainly homes that have not met the compliance requirements, I think it's also fair to say that historically the majority of homes have obviously tried to provide an environment that is in the best interests of their clients: They've tried to comply with the rules and regulations and follow up when recommendations and orders are issued. I hope that we can take a look at this whole issue of continuous quality improvement and try to encourage everybody through best practices to do the best that they can. I hope you will seriously consider the recommendations that might be put forward in the way of incentives that could inspire those who are not performing as well as others to achieve the same type of environment and meet the compliance measures. I think that's important. So I would withdraw this if you're prepared to listen, "you" meaning the ministry.

1410

Ms. Smith: You know I'm always prepared to listen. Thank you.

The Chair: The motion is withdrawn. That moves us to government motion 316.

Ms. Smith: I move that the bill be amended by adding the following section under the heading "Miscellaneous":

"Recognition

"168.1 The director may, in accordance with the regulations, recognize long-term care homes with an excellent record of compliance with the requirements under this act."

To Mrs. Witmer's point, we did hear a great deal about the need for recognition of excellent records. I have visited, in the dozens of homes that I have visited, some that had exceptional records and really are outstanding in the service delivery that they are providing. Through our exception that we had originally drafted to the annual inspection, we are trying to address that. We did hear concerns from some that they wanted to see annual inspections, including those concerns of Ms. Martel, so we have ensured that we are having annual inspections. We also heard concerns that we were not addressing the recognition of good homes well enough by having only a reg-making power. That's why, through this motion 316, we have moved it into the actual body of the legislation while retaining the ability through regulation to actually set out how we will recognize excellent records of compliance.

Ms. Martel: Chair, I have no problem with the amendment. Maybe I can just make a suggestion because it follows on the conversation about what could be done.

An awards program is great. You might also want to consider, and this will require incentives and funding—if you have a home that is demonstrating best practices, perhaps, with respect to dealing with residents who suffer from dementia and are doing some exceptional work in that regard, they may require additional financial support to keep that going. You might look at those kinds of things too where people are doing exceptional things with respect to best practices in the care of residents.

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

I would ask, shall sections 169 to 171, inclusive, carry? Carried.

Thus to a new section, 171.1, government motion 317.

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

"Altering or revoking orders

"171.1 The power to make orders under this act includes the power to alter or revoke such orders from time to time and make others."

This is to enable the director to have the flexibility to issue a different type of order. If an error is made or if we have achieved partial compliance, but there is a need to issue a different type of order in order to address that partial compliance, they would have the flexibility to do that as well.

The Chair: If there is no discussion, those in favour of the motion? Opposed? Carried.

This moves us to NDP motion 318.

Ms. Martel: Chair, before I move it, I have a question; I apologize. I think Mrs. Witmer might already have moved an amendment in this regard that appeared somewhere else in the bill. If she did, I'll withdraw it. If she didn't, I'll read it into the record and then you can rule it out of order. I just can't remember if she did.

Mrs. Witmer: I did.

Ms. Martel: Okay. It's going to be ruled out of order, so I won't go there.

The Chair: Okay.

I would ask, shall sections 172 to 175, inclusive, carry? Carried.

Section 176, government motion 319.

Ms. Smith: I move that section 176 of the bill be struck out and the following substituted:

"Immunity

"176. No action or other proceeding, other than an application for judicial review under the Judicial Review Procedure Act or any right of appeal or review that is permitted under this act, shall be commenced against the crown, the minister, the director or any employee or agent of the crown for anything done or omitted to be done in good faith in the execution or intended execution of a power or duty under this act."

This is just to clarify that the judicial review powers under the Judicial Review Procedure Act are still in place and that this section does not preclude any right of appeal as it appears under the act.

The Chair: If there is no debate, all those in favour of the motion? Opposed? It is carried.

Shall section 176, as amended, carry? Carried.

That moves us now to section 177, starting with PC motion 320.

Mrs. Witmer: I move that section 177 of the bill be amended by adding "or (2.1)" after "subsection (2)" in subsection (1), by striking out "Every" and substituting "Subject to subsection (2.1) every" at the beginning of subsection (2), and by adding the following subsection:

"Exception

"(2.1) Subsection (1) and (2) shall not apply where an individual who is convicted of an offence under this act is an individual member of a board of trustees or directors of a corporation, or an individual member of a board of management for a home under section 123 or 127, or an officer of a corporation, and is convicted solely in that capacity, in which case that individual is liable for a fine of not more than $1,000 and shall not be subject to imprisonment."

This is dealing with the penalty issue. As you know, that particular issue caused grave concerns for OANHSS; we also heard about it from the Ontario Long Term Care Physicians, the Don Mills Foundation for Seniors and the regional municipality of Waterloo.

Section 67, combined with section 156, which does not recognize a board's due diligence and the statutory offence provisions in section 177, substantially increased the duties, responsibilities and liabilities of directors and officers of corporations operating long-term-care homes. Section 177 places significant penalties on licensees for failure to comply that actually could result in conviction for a quasi-criminal offence, subject to fines of $25,000 for a first offence or imprisonment for not more than 12 months, or both. Canadian law, apparently, does not allow insurance policies to cover fines of any kind. Thus, these volunteer directors and anyone who is subject to such fines under this legislation would currently be left to pay these costs. Worse yet, this legislation has the potential for imprisonment for these volunteer directors.

Existing long-term-care legislation does not include offence provisions that impose potential personal liability for directors and officers, so this is new. If you take a look at the Public Hospitals Act, there is a general offence provision relating to contravention of the act and its regulations, but the penalty on conviction is very minor: a fine of not less than $50 and not more than $1,000.

So there was a lot of concern about what this might mean unless this amendment was introduced.

We also heard from the doctors, who said this is particularly and disproportionately punitive in nature, in light of the named offences under the act. That's why I've introduced this exception.

Ms. Smith: I would ask the members of the committee to look at motions 320, 321, 321.1 and 322. I think we're all singing from the same songbook, more or less. I would note that Mrs. Witmer has attempted to put herself on the side of the angels, but in fact her exception is broader than ours, in that she is including members of boards of trustees and directors of all corporations—"an individual member of a board of management for a

home"—whereas the government and Ms. Martel are limiting the lesser fine requirements to boards of trustees and directors of charitable or non-profit homes and for our members of boards of management.

1420

So I will be moving 321.1. I note that the government has in our motion removed the imprisonment sanctions and reduced the fines to not less than $50 and up to $1,000 for those who are directors or officers of a corporation that is the licensee of a non-profit long-term-care home. So we will be going with our motion, which I think is fairly close to Ms. Martel's motion as well.

Ms. Martel: Can I just ask a question? My concern had been to deal specifically with municipal homes, non-profit homes and charitable homes. The reference in the government motion to subsection 67(2), as I look at it, goes back to where the licensee is a corporation. Just to be clear, does that mean that people who sit on municipal boards are also covered, so it's not just the officer? By using "corporation" you are capturing those people who are trustees or sit on boards, I'm assuming. Is that correct?

Ms. Smith: Yes, we're capturing members of the committee of management.

Ms. Martel: And in the case of a not-for-profit home, are they usually a corporation too? I should know that, but I don't; I apologize.

Ms. Smith: Yes.

Ms. Martel: Okay. So as long as they're captured in there, I'm happy.

The Chair: I will call the vote on 320. Those in favour of the motion? Opposed? It is lost.

We now move to government motion 321.

Ms. Smith: I want to withdraw 321 and move 321.1.

The Chair: Okay. So 321.1 was handed out.

Ms. Smith: Yes. I move that section 177 of the bill be amended by adding the following subsection:

"Directors etc.

"(2.1) Despite subsection (1), the following rules apply if an individual is convicted of an offence under this act by virtue of section 67:

"1. If the individual is a member mentioned in subsection 67(2), or a director or officer of a corporation that is the licensee of a non-profit long-term-care home, the individual is liable to a fine of not less than $50 and not more than $1,000.

"2. In every other case, the individual is liable to a fine of not more than $25,000 for a first offence, and not more than $50,000 for a second or subsequent offence."

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

That brings us to NDP motion 322.

Ms. Martel: In light of the motion that we have just passed, I will withdraw this motion.

The Chair: That brings us to PC motion 323. Ms. Witmer, do you need a moment?

Mrs. Witmer: Yes, I do.

I move that subsection 177(5) of the bill be struck out.

This is based on the belief that it's not appropriate to have absolutely no limitation on the time period for prosecution in the long-term-care sector when a reasonable period is afforded to other Ontarians.

Ms. Smith: I would note that subsection 177(5) in Bill 140 is exactly the same as the Nursing Homes Act, subsection 36(4), and there are no penalty or limitation provisions under the Charitable Institutions Act or under HARHA. So we think that removing this would place a limitation on the ministry to prosecute that's unacceptable.

The Chair: I will call the vote. Sorry; Ms. Witmer?

Mrs. Witmer: I want to go back a bit. I want to go back to 177 and the exception that we introduced. There was never an attempt to exempt anybody other than the people in the not-for-profit sector. So I'm not sure where the government—they did make that inference and that was never the intent; that wasn't how we had asked for the motion to be drafted.

Ms. Smith: Okay. Just look at motion 320. That's how I read it, so if that wasn't your intent—

Mrs. Witmer: No, it was never—

Ms. Smith: —"an individual member of a board of trustees or directors of a corporation, or an individual member of a board of management ... under section 123 or 127."

Mrs. Witmer: No. Our intent was always based on the input we had received from OANHSS and from the municipalities and the concerns they had. It was the not-for-profit group of people that we were concerned about.

Ms. Smith: Okay. Back to 323?

The Chair: I will call the vote for 323. Those in favour of the motion? Opposed? The motion is lost.

Shall section 177, as amended, carry? It is carried.

Moving to section 178: government motion 324.

Ms. Smith: I move that the French version of subsection 178(1) of the bill be amended by striking out "partie" and substituting "loi."

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

Government motion 325?

Ms. Smith: I move that subsection 178(2) of the bill be amended by adding the following clause:

"(0.a) respecting the management and operation of long-term care homes."

This is the reg-making power that we moved out of a previous section so that it would apply to the entire legislation, and therefore we have to place it in section 178.

The Chair: In favour? Opposed? Carried.

Government motion 326.

Ms. Smith: I move that subsection 178(2) of the bill be amended by adding the following clauses:

"(a.1) providing for exceptions to the definition of 'staff' in subsection 2(1);

"(a.2) providing that provisions of this act specified in the regulation do not apply with respect to,

"(i) all persons falling within the definition of 'staff' in subsection 2(1),

"(ii) specified persons or classes of persons falling within that definition."

The Chair: Any debate? In favour? Opposed? Carried.

Next, we've got government motion 327.

Ms. Smith: I move that subsection 178(2) of the bill be amended by adding the following clause:

"(c.1) governing the manner of responding to complaints and reports."

We heard from some of our stakeholders, including the advocacy centre, that they'd like more information about how complaints are responded to and reports on complaints. We need to deal with the confidentiality issue of individuals who are making complaints. So what we've done is create a reg-making power that will allow us to deal with how we will report on complaints back to both the complainant and, if we deem it advisable, to the residents' council or post it in the home. But we want to give ourselves the flexibility to deal with the confidentiality issue.

The Chair: In favour of the motion? Opposed? It's carried.

We move next to government motion 327.1, which was distributed.

Ms. Smith: I move that subsection 178(2) of the bill be amended by adding the following clause:

"(c.2) defining 'drug' for the purposes of this act or for the purposes of any provision of this act."

Again, we spoke to this yesterday. We needed to move the definition to the end of the legislation so that we could incorporate where it's referred to anywhere, and that's where we took out "pharmaceutical agent" in a number of places because we were going to define it at the end.

The Chair: In favour? Opposed? Carried.

That brings us to government motion 328.

Ms. Smith: I move that clause 178(2)(k) of the bill be amended by striking out "a resident" in the portion before subclause (i) and substituting "any individual."

This is just for clarity. As well, this would give us the operational tools to deal with how we report complaints. Again, it deals with the confidentiality of the individual versus the resident, so we want to be able to address that in the regulations.

1430

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

That brings us, still in section 178, to PC motion 329.

Mrs. Witmer: In light of our previous discussion, I'm going to be recommending here that clause 178(2)(r) of the bill be struck out.

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

That brings us to government motion 330.

Ms. Smith: I move that clause 178(2)(u) of the bill be struck out and the following substituted:

"(u) providing for anything that under this act may or must be provided for or designated in regulations, or that is to be done in compliance with or in accordance with the regulations."

This is just adding the words "or designated" to provide for some clarity.

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

Shall section 178, as amended, carry? It is carried.

We have a new section 178.1, PC motion 331.

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

"Public consultation before making regulations

"178.1(1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under this act unless,

"(a) the minister has published a notice of the proposed regulation in the Ontario Gazette and given notice of the proposed regulation by all other means that the minister considers appropriate for the purpose of providing notice to the persons and entities who may be affected by the proposed regulation;

"(b) the notice complies with the requirements of this section;

"(c) the time periods specified in the notice, during which persons may make comments under subsection (2) have expired;

"(d) the minister has considered whatever comments that persons have made on the proposed regulation in accordance with subsection (2) or an accurate synopsis of the comments; and

"(e) the minister has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the minister considers appropriate.

"Contents of notice

"(2) The notice mentioned in clause (1)(a) shall contain,

"(a) a description of the proposed regulation and the text of it;

"(b) a statement of the time period during which any person may submit written comments on the proposed regulation to the minister and the manner in which and the address to which the comments must be submitted;

"(c) a statement of where and when any person may review written information, if any, about the proposed regulation; and

"(d) all other information that the minister considers appropriate.

"Time period for comments

"(3) The time period mentioned in clause (2)(b) shall be at least 60 days after the minister gives the notice mentioned in clause (1)(a) unless the minister shortens the time period in accordance with subsection (4).

"Shorter time period for comments

"(4) The minister may shorten the time period if, in the minister's opinion,

"(a) the urgency of the situation requires it;

"(b) the proposed regulation clarifies the intent or operation of this act or the regulations made under it; or

"(c) the proposed regulation is of a minor or technical nature.

"Discretion to make regulations

"(5) Upon receiving the minister's report mentioned in clause (1)(e), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the minister's report.

"No public consultation

"(6) The minister may decide that subsections (1), (2), (3), (4) and (5) should not apply to the power to make a regulation under this act if, in the minister's opinion,

"(a) the urgency of the situation requires it;

"(b) the proposed regulation clarifies the intent or operation of this act or the regulations made under it; or

"(c) the proposed regulation is of a minor or technical nature.

"Notice

"(7) If the minister decides that subsections (1), (2), (3), (4) and (5) should not apply to the power to make a regulation under this act,

"(a) those subsections do not apply to the power to make the regulation; and

"(b) the minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision.

"Contents of notice

"(8) The notice mentioned in clause (7)(b) shall include a statement of the minister's reasons for making the decision and all other information that the minister considers appropriate.

"Publication of notice

"(9) The minister shall publish the notice mentioned in clause (7)(b) in the Ontario Gazette and give the notice by all other means that the minister considers appropriate.

"No review

"(10) Subject to subsection (11), no court shall review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

"Exception

"(11) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the grounds that the minister has not taken a step required by this section.

"Time for application

"(12) No person shall make an application under subsection (11) with respect to a regulation later than 21 days after the day on which the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), if applicable."

This wording is to a large degree based on the legislation that was contained within the LHIN legislation.

The Chair: Debate?

Ms. Smith: I would note that motions 331, 332 and 332.1 all deal with the same issue. I believe that Ms. Martel's is very similar to 331. I would point out that our 332.1 is the government motion. It differs in a couple of ways, and I think, for the purposes of time management, I'll just go through what our changes are, and then we can talk about the notion.

The changes are with respect to 178.1(1)(a), that "the minister has published a notice of the proposed regulation on the website of the ministry and in any other format the minister considers advisable." So we're not putting the Gazette provision there because our experience has been that most people go to the website; very few people would start at the Gazette.

We have merged clause (d) and (e) into clause (d). The time period for comment we have limited to 30 days as opposed to 60 days in subsection (3). In subsection (9), we again reference only the website, not the Gazette. In subsection (10), we have reworded "a court shall not review any action," which is very similar; it's the same concept, just a different wording. And we have added section 178.2: "(1) The minister may decide that the procedures set out in section 178.1 shall apply to a regulation that is not the initial regulation with respect to a matter if the minister decides that it is advisable in the public interest to do so, and in such a case section 178.1 applies with necessary modifications."

What we're trying to do here is that on the first round of regulations we would go through this process, but for subsequent regulation changes we may or may not take the same process. It's to give the ministry some flexibility to move forward on amendments that happen on a regular basis without having to go through the whole consultation process.

I know that Ms. Witmer and Ms. Martel are both pretty familiar with the long-term-care regime. On an annual basis, we look at copay; we do some other regulation changes that would be considered part of the routine matters of managing the system. I think if the minister felt that there was a change that was going to be substantial, it would be in his discretion to invoke section 178.1, but on the regular day-to-day activity of long-term care, we could do a shorter process for amending a regulation. So that's why we've included section 178.2.

That will be the government's position on how we want to move forward. We did make a commitment during the hearings that we would be doing public consultations on the regulations arising out of this legislation, so I think we're ad idem on pretty much everything except for those few things that I've just mentioned.

The Chair: Ms. Witmer?

1440

Mrs. Witmer: I think what people were most looking for was the opportunity to participate and be consulted in the development of the regulations, so that there could be very thoughtful consideration given to how this was going to apply to putting them into practice. I think it is also an opportunity for the government, because of what we've heard is a somewhat heavy-handed approach to this legislation, in some respects, with a lot of new paper and requirements, and working together in the regulation-making with the parties who are interested hopefully could foster some trust and co-operation in moving for-

ward. Also, I know the government speaks in the preamble to collaboration.

Why have you gone from 60 to 30 days? In the other legislation we allowed for 60 days.

Ms. Smith: There are different times in different pieces of legislation. Some have used 60, some have used 30. I was told that 30 is more manageable as far as moving things forward. There has been, as you well know, quite a bit of pressure to get this legislation in place and moving forward, and I think that we want to continue to move things forward as quickly as we can. I think 30 days does allow for those involved in the sector to respond to any possible amendments or regulations.

Mrs. Witmer: When do you see this process of consultation on the regulations taking place? What's the timeline that's anticipated?

Ms. Smith: I don't have a timeline before me today. Obviously, as we've gone through it, there are a lot of regulations to be drafted. We have started working on regulations. I don't anticipate that we would wait until we had them all to go forward, but that we would start with some and start the process. Am I right?

Interjection.

Ms. Smith: Yes. We have been working on regulations, so I anticipate that we'd be moving forward fairly quickly with the first batch.

Ms. Martel: I just had a question, just to be sure about 178.2(1). I'm assuming that it is the addition of the words "not the initial regulation" which makes it clear that all the regulations that flow from this bill will follow the process that's outlined. Those are the key words that make the distinction between what's coming from this bill, which should be new, versus other regulations that may already be in place that are being amended.

Ms. Smith: Sorry, Ms. Martel.

Ms. Martel: That's okay. I think this is correct, but I just want to be clear that the distinction between what's coming from this bill and where you have regulations that may already be in place that you amend from time to time is around the words "the initial regulation."

Ms. Smith: Yes, "The initial regulation with respect to a matter...."

Ms. Martel: Okay, so we assume that what is coming from here is new for the first time and will be dealt with under the process that we're going to agree to.

Ms. Smith: Yes, and then it's the minister's discretion on others.

I would also just point out to Mrs. Witmer that what we've said is, "Shall be at least 30 days." So if there's a particular issue where we think that a longer consultation period would be appropriate, we've allowed ourselves the flexibility to go with a longer period, but at least 30 days.

The Chair: Shall I call the vote on 331?

Mrs. Witmer: I would withdraw my motion.

The Chair: Motion 331 is withdrawn.

That brings us to NDP motion 332.

Ms. Martel: I'll withdraw that, Chair.

The Chair: That is withdrawn.

That brings us to government motion 332.1.

Mrs. Jeffrey: I move that the bill be amended by adding the following sections:

"Public consultation before making initial regulations

"178.1(1) The Lieutenant Governor in Council shall not make the initial regulation with respect to any matter about which the Lieutenant Governor in Council may make regulations under this act unless,

"(a) the minister has published a notice of the proposed regulation on the website of the ministry and in any other format the minister considers advisable;

"(b) the notice complies with the requirements of this section;

"(c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2)(b) or (c), have expired; and

"(d) the minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2)(b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the minister considers appropriate.

"Contents of notice

"(2) The notice mentioned in clause(1)(a) shall contain,

"(a) a description of the proposed regulation and the text of it;

"(b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the minister and the manner in which and the address to which the comments must be submitted;

"(c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;

"(d) a statement of where and when members of the public may review written information about the proposed regulation; and

"(e) all other information that the minister considers appropriate.

"Time period for comments

"(3) The time period mentioned in clauses (2)(b) and (c) shall be at least 30 days after the minister gives the notice mentioned in clause (1)(a) unless the minister shortens the time period in accordance with subsection (4).

"Shorter time period for comments

"(4) The minister may shorten the time period if, in the minister's opinion,

"(a) the urgency of the situation requires it;

"(b) the proposed regulation clarifies the intent or operation of this act or the regulations; or

"(c) the proposed regulation is of a minor or technical nature.

"Discretion to make regulations

"(5) Upon receiving the minister's report mentioned in clause (1)(d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the

proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the minister's report.

"No public consultation

"(6) The minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under this act if, in the minister's opinion,

"(a) the urgency of the situation requires it;

"(b) the proposed regulation clarifies the intent or operation of this act or the regulations; or

"(c) the proposed regulation is of a minor or technical nature.

"Same

"(7) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under this act,

"(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

"(b) the minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision.

"Contents of notice

"(8) The notice mentioned in clause (7)(b) shall include a statement of the minister's reasons for making the decision and all other information that the minister considers appropriate.

"Publication of notice

"(9) The minister shall publish the notice mentioned in clause (7)(b) on the website of the ministry and give the notice by all other means that the minister considers appropriate.

"No review

"(10) Subject to subsection (11), a court shall not review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

"Exception

"(11) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the grounds that the minister has not taken a step required by this section.

"Time for application

"(12) No person shall make an application under subsection (11) with respect to a regulation later than 21 days after the day on which the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), if applicable.

"Amendments

"178.2(1) The minister may decide that the procedures set out in section 178.1 shall apply to a regulation that is not the initial regulation with respect to a matter if the minister decides that it is advisable in the public interest to do so, and in such a case section 178.1 applies with necessary modification.

"No review

"(2) A court shall not review any decision by the minister under this section as to whether or not to make the procedures set out in section 178.1 apply to a regulation."

The Chair: Thank you. We have in a sense debated this already. Any additional debate? I will call the vote. Those in favour? Opposed? It is carried.

Shall section 179 carry? Carried.

We move now to section 180 with government motion 333.

1450

Mr. Peter Fonseca (Mississauga East): I move that paragraphs 1, 2, 3, 4 and 6 of subsection 180(3) of the bill be struck out and the following substituted:

"1. For a home with new beds, the term shall be 25 years starting on the day the first resident was admitted to a new bed or, for one of the following homes, the term shall be 25 years starting on the day the first resident was admitted to the home, but in no event shall the term be less than 20 years from the date this paragraph comes into operation:

"i. Billings Court Manor (Burlington),

"ii. Millennium Trail Manor (Niagara Falls),

"iii. St. Joseph's Health Centre (Guelph),

"iv. St. Joseph's Mother House (Martha Wing) (Hamilton).

"2. For a home with class A beds, the term shall be 20 years starting on the day this section comes into operation.

"3. For a home with class B beds, the term shall be 15 years starting on the day this section comes into operation.

"4. For a home with class C beds, the term shall be 15 years starting on the day this section comes into operation....

"6. For a home with class D beds that were not upgraded in accordance with the upgrade option guidelines, the term shall be four years starting on the day this section comes into operation."

Mr. Leal: Mr. Chair, can I ask for a recorded vote on this one?

The Chair: Yes. Debate?

Ms. Smith: The changes in the listings of the homes is just a correction to ensure that we are listing the appropriate name of a home—Millennium Trail Manor as opposed to Oakville Park Lodge. We wanted to ensure that our newer homes, which opened early on in the process of new homes, had at least a 20-year licence because the licence term that we are determining starts from the time the first resident has entered the home. In some cases, some of our newer homes have been open for seven years. The 25-year licence would have started running and they'd only have 18 left, so we're ensuring that they have 20, which is why we have that provision. We've also lengthened the terms for all of the other types of homes, as was requested by the OLTCA, except with respect to homes that have two types of classifications. We haven't gone with the OLTCA recommendations in those cases.

Ms. Martel: I don't think it will be a surprise, given the comments I made about section 100, that I will not be

supporting this particular section that sets out the different fixed terms. Section 100 set out the provision to have a licence with a fixed term in the first place. This particular section then outlines what those terms will be, depending on the category of bed. I put forward a position that had been put forward to the government by OANHSS, which essentially said, as I said before, that homes continue to have licences; that there was not a history of homes not responding when the government provided funding to redo the D beds. The overwhelming majority did.

If the government has very specific concerns with respect to a specific home, I think they can deal with that under subsection 99(1), which says, "A licence is subject to the conditions, if any, that are provided for in the regulations." I think the real issue here is a capital development project, which I hope the government is going to come forward with. I feel very confident that if they did, operators would step up to the plate, just as people who were redoing D homes did.

Finally, I just want to again in this section raise the concerns that we heard specifically from smaller homes in rural areas and not-for-profit homes about the conversations that some of them have already had with lending institutions that they have a relationship with, which have indicated to them that these provisions would present a greater risk to the financial institution and therefore would require greater payments, if indeed these homes can even find the money to move forward without government support. I am not really interested in giving the banks any more money than they already have. So as with section 100, my concerns apply to this particular section because of the actual terms of the licence based on the category of the homes as set out in this specific section.

Mrs. Witmer: This motion certainly does not in any way, shape or form address the concerns that were expressed to us. The issue is the whole issue of the licensing terms. This simply speaks to the length of the licensing term. The reality is, and Ms. Martel has spoken to it, regardless of the time and based on the fact that a home can be closed down at any time without any reason needing to be provided, it's creating uncertainty. People aren't going to be able to get financing. In fact, they're going to find it increasingly difficult to do any upgrading or any renovations. The government is not willing to commit to any capital renewal plan. I'll tell you, the very future of this sector, particularly the small homes, is threatened. So I can't support this, because it isn't providing the certainty and it isn't going to allow for capital funding to be provided to the homes in order that they can rebuild them, that they can get rid of the three- and four-bed wards, that they can build homes or renovate homes to make them totally wheelchair-accessible. So this motion is totally inadequate.

The Chair: Any other discussion? I will call the vote. Those in favour of the motion?

Mr. Leal: Recorded, Mr. Chair.

The Chair: Correct; a recorded vote was requested.

Ayes

Fonseca, Jeffrey, Leal, Ramal, Smith.

Nays

Martel, Witmer.

The Chair: The motion is carried.

That brings us to PC motion 334.

Mrs. Witmer: Based on what has just been passed, I would withdraw this motion, because the government has already made their decision as to how they're going to move forward in this regard.

The Chair: That brings us to NDP motion 335.

Ms. Martel: I move that subsection 180(3) of the bill be struck out.

I won't go through the arguments that I already made, both with respect to section 100 and comments that I just made around the government's amendment in this section.

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

Government motion 336.

Ms. Smith: Motion 336 is withdrawn; to 336.1.

The Chair: Motion 336.1 has been distributed separately.

Ms. Smith: I move that section 180 of the bill be amended by adding the following subsections:

"Special rule for homes that have provided notice

"(3.1) Despite subsection (3) or anything else in this section to the contrary, if an approved corporation operating an approved charitable home for the aged under the Charitable Institutions Act has provided notice to the ministry on or before February 1, 2007 of its intention to close the home, the approved corporation shall receive a temporary licence under section 110.

"Special rule for homes under development at the time of proclamation

"(3.2) Despite subsection (3) or anything else in this section to the contrary, any long-term care home that is being developed and has not yet opened as of the date this section comes into operation shall be deemed to receive a term equal in duration to such term the home would have received had it been developed and opened on the date subsection (3) comes into operation."

The second amendment is to deal with those homes where we've put out an RFP and we anticipate they will be in the process of being built when this comes into force, and the first is to deal with a couple of situations where we've had notice from homes of their intention to look at winding down, and we need to be able to address that with a temporary licence.

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

Still on section 180, government motion 337.

Mr. Leal: I move that subsection 180(4) of the bill be amended by striking out "or" at the end of clause (a) and by adding the following clauses:

"(c) paragraphs 2 and 3 of subsection (3) apply to a home, in which case the term for that home shall be 15 years or such other term as one of the homes would be entitled to under paragraph 2 or 3, whichever is shorter, and shall start on the day this section comes into operation; or

"(d) paragraphs 2 and 4 of subsection (3) apply to a home, in which case the term for that home shall be 15 years or such other term as one of the homes would be entitled to under paragraph 2 or 4, whichever is shorter, and shall start on the day this section comes into operation."

1500

The Chair: Debate?

Ms. Smith: This is just in order to deal with those homes that have different classifications of construction; some are B and A and C and A. This provides for more certainty as to what licence term those types of homes will be receiving.

The Chair: Any other debate? I'll call the vote. Those in favour? Opposed? Number 337 is carried.

That brings us to PC motion 338.

Mrs. Witmer: Based on the government's moving of the previous motion, I would withdraw this one since they've made a decision.

The Chair: That brings us to government motion 339.

Mrs. Jeffrey: I move that subsection 180(5) of the bill be struck out and the following substituted:

"Special rule for homes with class D beds that were not upgraded, if agreement

"(5) If the licensee of a home described in paragraph 6 of subsection (3) agrees, during the first year of the four-year term set out in that paragraph, to redevelop the home to the current standards to the satisfaction of the director, the director shall give an undertaking under section 98 that he or she will issue a new licence under section 97 to the licensee after the redevelopment is completed, and the director may, despite clause 112(2)(b), extend the four-year term for such additional time that the director considers sufficient to complete the redevelopment."

The Chair: Debate?

Ms. Smith: Both this one and motion 340 are in order to deal with the last few homes that have D classifications and in order to allow for the completion of the redevelopment of those homes if the homes so choose.

The Chair: Those in favour of the motion? Opposed? Carried.

That brings us now to 340. Motion 340 has been withdrawn.

Ms. Smith: No.

The Chair: Motion 340 stands?

Ms. Smith: Yes.

Mr. Ramal: I move that subsection 180(7) of the bill be struck out and the following substituted:

"Special rule for homes with class D beds that were not upgraded, if no agreement

"(7) If the licensee of a home described in paragraph 6 of subsection (3)"—

Ms. Smith: Sorry, Chair; my mistake. Motion 340 was being withdrawn. It's 340.1 that should be considered. You were right and I was wrong.

The Chair: I suspected that.

Ms. Smith: I apologize.

The Chair: So 340 is withdrawn; 340.1. I've always believed I'm not as stupid as I look.

Mr. Ramal: I move that subsection 180(7) of the bill be struck out and the following substituted:

"Special rule for homes with class D beds that were not upgraded, if no agreement

"(7) If the licensee of a home described in paragraph 6 of subsection (3) does not agree, during the first year of the four-year term, to redevelop the home to the current standards and to the satisfaction of the director, the director shall be deemed to have given notice to the licensee under clause 101(1)(a) that no new licence will be issued."

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

Shall section 180, as amended, carry? It is carried.

We now move to section 180.1, which is new: PC motion 341.

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

"Initial review

"180.1(1) Within five years of proclamation of this act, the minister shall appoint a review committee of no less than three persons to review the operation of this act and the regulations and to make recommendations to the minister concerning amendments and other matters.

"Time for review

"(2) The review committee shall complete its review and make recommendations to the minister within 18 months of its appointment.

"Committee composition

"(3) The review committee shall include at least one representative from each of the for-profit, non-profit and municipal long-term care home licensee sectors.

"Subsequent review

"(4) The minister shall, no later than five years after the appointment under subsection (1), appoint a committee to conduct a subsequent review and shall, no later than five years after the most recent appointment under this subsection, appoint committees to conduct subsequent reviews."

This was a point that was brought to our attention and OANHSS was one of the individual groups that did recommend, I guess in light of the extensive requirements and regulations and changes that you're making to the whole long-term-care sector, that there should be a provision included to ensure that there would be a review of the effectiveness of this act after it has been in operation for a period of time, in this case five years.

Also, I would hasten to add that this type of sunset provision is very consistent with other complex legislation that this government has introduced, such as the Local Health System Integration Act, 2006, and the Personal Health Information Protection Act, 2004.

The Chair: If there's no debate—Ms. Smith?

Ms. Smith: Just a very quick comment. We have been very sensitive to those sections of the act that would require a change over time and have thus attempted to address those in regulation more than in the actual legislation. So I don't feel that a review in five years is necessary. I don't believe that it is the same type of legislation as the LHIN legislation, which is new and introduces a whole new concept to our health care. This is an amalgamation of three into one, and I think we have included a great deal of flexibility in our reg-making ability to deal with anything that may come up that needs to be addressed.

The Chair: Ms. Martel?

Ms. Martel: My amendment number 343 is the same as Mrs. Witmer's and I agree with her.

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

Mrs. Witmer: I would have a recorded vote.

The Chair: A recorded vote.

Ayes

Martel, Witmer.

Nays

Fonseca, Jeffrey, Leal, Ramal, Smith.

The Chair: The motion is lost.

That brings us to NDP motion 342.

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

"Education

"180.1 The ministry shall provide funding to develop and implement education to assist the long-term care homes, residents, families and ministry staff in understanding and applying the new legislative requirements such that all parties have consistent clarity on those requirements and their part in meeting them."

The Chair: The motion is out of order.

NDP motion 343.

Ms. Martel: Chair, it's the same as that put by Mrs. Witmer, which we've already voted on, so I will withdraw it.

The Chair: Shall sections 181 to 185, inclusive, carry? They are carried.

Prior to voting on section 186, I would ask if there is any debate.

Mrs. Witmer: No. I would simply say that our recommendation would be to vote against section 186.

The Chair: I will call the vote. Shall section 186 carry? It is carried.

Moving to section 186.1, which is new: NDP motion 345.

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

"Review of funding system

"186.1 Within one year of the day this act received royal assent, the ministry shall revise the funding system for long-term care homes."

The Chair: Any additional debate?

Ms. Martel: Actually, this recommendation comes from the coroner's jury that looked into the deaths at Casa Verde. It was recommendation 26. The coroner's jury did extensive work and heard from many people over many days of testimony. I think this is an important recommendation because they made it clear that changes in funding were required, and even at the time of publishing their recommendations, they said within one year. We are beyond that period, but if recognized that we are dealing with this particular bill, it would be appropriate to deal with it in this bill and say that one year after, the government should be in a position to revise the funding system for long-term-care homes in the province.

1510

The Chair: Okay. Any addition to the discussion?

Ms. Smith: Yes. We don't believe that it would be appropriate to include this kind of provision in the legislation. It really doesn't deal with the governing of our long-term-care homes. It deals with the system, and there's nothing that would require legislative authority to do a funding system review. It can be determined through policy, and I know that through the Casa Verde recommendations the ministry is aware that there has been a request made for that kind of review. Actually, if you read my report, Commitment to Care, I talk about a review of the funding system in long-term care, so it can be addressed in policy.

The Chair: Any additional debate?

I'll call the vote on motion 345. Those in favour? Those opposed? The motion is lost.

NDP motion 346.

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

"Review of funding system

"186.2 Within one year of the day this act receives royal assent, the ministry shall commission an independent consultant to conduct a thorough and evidence-based report on the appropriate staffing levels for long-term care facilities in Ontario."

This flows out of the Casa Verde recommendations as well, from the coroner's jury, where they specifically talked about the need to update the Pricewaterhouse-Coopers study that had been done, and once that was done, to then move to a system where levels of care of residents would be met. This follows up on the number of recommendations they made which speak to the need to have that work done again so that we have a very good system on which to base staffing levels.

I've also argued that very clearly we should have 3.5, because I think you'd find after you did a thorough review that it's probably going to be even higher than that, so I think 3.5 should be what we have in place right now. But I also think that doing the report would support that and would probably show a need for even greater

levels of care, given the frail nature of those who are coming into long-term-care homes as residents.

The Chair: Any other debate?

Ms. Smith: The ministry presently has the discretion to undertake such a cut study and I don't think it's appropriate to include this in legislation.

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

Shall section 187 carry? Carried.

That moves us next to section 188, government motion 347.

Mr. Fonseca: I move that subsection 188(5) of the bill be struck out and the following substituted:

"(5) Subparagraph 8 iii of subsection 55(1) of this act is repealed and the following substituted:

"iii. the financial statements relating to the home filed with the director under the regulations or provided to a local health integration network, and."

The Chair: Any debate?

Ms. Smith: This amendment and a number of the subsequent amendments are a result of the local health integration network legislation that was passed. We need to incorporate that language into the legislation.

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

Still on the same section, government motion 348.

Mrs. Jeffrey: I move that section 188 of the bill be amended by adding the following subsections:

"(10.1) Subsection 88(4) of this act is amended by adding 'including a local health integration network' after 'crown.'

"(10.2) Subsection 99(3) of this act is repealed and the following substituted:

"Conditions of licence

"(3) It is a condition of every licence that the licensee shall comply with this act, the Local Health System Integration Act, 2006, the Commitment to the Future of Medicare Act, 2004, the regulations, and every order made or agreement entered into under this act and those acts."

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

Government motion 349.

Mr. Leal: I move that section 188 of the bill be amended by adding the following subsections:

"(17) Subsection 160(6) of this act is repealed and the following substituted:

"Notice of decision

"(6) The director shall serve the following with notice of the director's decision, which shall include reasons if the order is confirmed or altered:

"1. The licensee.

"2. The local health integration network that provides funding under the Local Health System Integration Act, 2006, to the licensee, in respect of a decision that relates to an order made under section 151.

"(18) Section 164 of this act is repealed and the following substituted:

"Parties

"164. The parties to an appeal are,

"(a) the licensee;

"(b) the director; and

"(c) in the case of an appeal from an order made under section 152, the local health integration network that provides funding under the Local Health System Integration Act, 2006, to the licensee.

"(19) Section 176 of this act repealed and the following substituted:

"Immunity

"176. No action or other proceeding, other than an application for judicial review under the Judicial Review Procedure Act or any right of appeal or review that is permitted under this act, shall be commenced against the crown, the minister, the director or any employee or agent of the crown, including a local health integration network, or any officer, director or employee of a local health integration network, for anything done or omitted to be done in good faith in the execution or intended execution of a power or duty under this act."

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

Shall section 188, as amended, carry? It is carried.

Shall sections 189 to 199 carry? Carried.

That brings us to section 200 and government motion 350.

Mr. Ramal: I move that subsection 200(3) of the bill be struck out and the following substituted:

"(3) The definition of 'crisis' in section 39 of the act is repealed and the following substituted:

"'crisis' means a situation prescribed by the regulations as a crisis; ('crise')"

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

Government motion 351.

Mr. Fonseca: I move that subsection 200(4) of the bill be struck out and the following substituted:

"(4) Section 39 of the act is amended by adding the following definition:

"'secure unit' means a secure unit within the meaning of the Long-Term Care Homes Act, 2007; ('unité de sécurité')"

Ms. Smith: This is just to ensure that we have consistency between the Health Care Consent Act and the Long-Term Care Homes Act, which we're amending.

Ms. Martel: I think I missed that. I thought it meant that because we had provided a definition for "secure unit"—maybe we didn't, because it was a long time ago that we did the definitions section—you were making sure it complied with the definition in the definitions section. Is that what this is?

Ms. Smith: Sorry, no. We're actually amending section 39 of the Health Care Consent Act. So this is a subsequent amendment, through the Long-Term Care Homes Act, to amend the Health Care Consent Act in order to ensure that "secure unit," as we define it, is how they define it.

1520

The Chair: Okay. Shall I call the vote on 351? All in favour of the motion? Opposed? Carried.

Motion 352.

Mrs. Jeffrey: I move that section 200 of the bill be amended by adding the following subsection:

"(8.1) Subsection 47(2) of the act is repealed and the following substituted:

"Consent or refusal to be obtained

"(2) When an admission to a care facility is authorized under subsection (1), the person responsible for authorizing admissions to the care facility shall obtain consent, or refusal of consent, from the incapable person's substitute decision-maker promptly after the person's admission."

The Chair: Thank you. I have some question whether this motion is in order given that section 47 of the Health Care Consent Act is not open.

Ms. Smith: Mr. Chair, we believe that this amendment is required to rectify an inconsistency that would otherwise result in the restraint admission in the secure unit provisions of Bill 140. Consent is required before admission or transfer to a secure unit and before admission to a long-term-care home by either the person or the person's substitute decision-maker. I think in order to have the consistency between our legislation and the Health Care Consent Act, we need to be able to address that through this amendment. Do we need all-party agreement to open that section of the Health Care Consent Act?

The Chair: No.

Ms. Smith: Do you want all my legal reasons why this is appropriate?

Interjections.

Ms. Smith: No, the other ones were already opened by the legislation.

The Chair: The question is, if we don't do this amendment, is either one of the bills now technically flawed?

Ms. Smith: Is either one of the bills—sorry?

The Chair: Technically flawed.

Ms. Smith: The amendment is required, otherwise we will have inconsistency between the two pieces of legislation, yes.

The Chair: I am going to accept this amendment. Okay. Debate?

Ms. Smith: I think we've pretty much covered it.

The Chair: I will call the vote. All those in favour? Opposed? It is carried.

Shall section 200, as amended, carry? Carried.

Shall sections 201 and 202 carry? Carried.

That brings us to section 203.

Mr. Ramal: I move that section 203 of the bill be amended by adding the following subsections:

"(2) Subsections (3) and (4) apply only if Bill 171 (Health System Improvements Act, 2006), introduced on December 12, 2006, receives royal assent.

"(3) References in subsection (4) to provisions of Bill 171 or to provisions of the Health Protection and Promotion Act mentioned in that bill are references to those provisions as they were numbered in the first reading version of the bill.

"(4) On the later of the day this subsection comes into force and the day that section 14 of schedule F to Bill 171 comes into force, paragraphs 2 and 10 of the definition of 'health care provider or health care entity' in subsection 77.7 (5) of the Health Protection and Promotion Act are repealed and the following substituted:

"2. A service provider within the meaning of the Home Care and Community Services Act, 1994 who provides a community service to which that act applies....

"10. A long-term care home under the Long-Term Care Homes Act, 2007."

The Chair: This amendment is out of order.

Mr. Ramal: Why didn't you tell me at the beginning, Mr. Chair?

The Chair: It has to be read first. I'm sorry.

Mr. Ramal: I'm joking.

The Chair: You did a great job, but it is out of order. That section is not open at this time.

Shall section 203 carry? Carried.

Shall sections 204 to 206 carry? Carried.

Section 207, government motion 354.

Mr. Fonseca: I move that subsection 207(4) of the bill be struck out and the following substituted:

"(4) Clause 28(3)(c) of the act is repealed and the following substituted:

"(c) issue an order under paragraph 1 of that subsection, in respect of the operation of a long-term care home, to a health service provider described in paragraph 4 of the definition of 'health service provider' in subsection 2(2), if the service provider is also described in another paragraph of that definition."

The Chair: Any debate?

Ms. Smith: This is another consequential amendment dealing with the Local Health System Integration Act.

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

Shall section 207, as amended, carry? Carried.

Shall sections 208 to 210 carry? Carried.

That brings us to section 211, government motion 355.

Mr. Leal: I move that subsections 211(5), (6), (7), (8), (9) and (10) of the bill be struck out and the following substituted:

"(5) Clause (c) of the definition of 'local board' in subsection 10(6) of the act is amended by striking out 'Homes for the Aged and Rest Homes Act' and substituting 'Long-Term Care Homes Act, 2007'.

"(6) The definition of 'lodging house' in section 11.1 of the act is repealed and the following substituted:

"'lodging house' means any house or other building or portion of it in which persons are lodged for hire, but does not include a hotel, hospital, long-term care home, home for the young or institution if it is licensed, approved or supervised under any other act; ('pension')

"(7) Clause 216(3)(c) of the act is amended by striking out 'Homes for the Aged and Rest Homes Act' and substituting 'Long-Term Care Homes Act, 2007'.

"(8) Clause (c) of the definition of 'local board' in section 223.1 of the act is amended by striking out 'Homes

for the Aged and Rest Homes Act' and substituting 'Long-Term Care Homes Act, 2007'."

The Chair: Any debate?

Ms. Smith: These are just technical amendments to reflect the changes to the Municipal Act.

The Chair: Ms. Martel?

Ms. Martel: What's the reference to the Municipal Act? I understand that's the act under change, but is it around something to do with the lodging house, something you have to have these other amendments—

Ms. Smith: It has to do with the fact that we refer to the Homes for the Aged and Rest Homes Act, and so now we have to reference the Long-Term Care Homes Act.

Ms. Martel: Got it.

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

Shall section 211, as amended, carry? It's carried.

Shall sections 212 to 215 carry? Carried.

That brings us now to section 216, government motion 356.

Mrs. Jeffrey: I move that subsection 216(2) of the bill be amended by adding "and Long-Term Care" after "Health."

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

Shall section 216, as amended, carry? Carried.

I will ask, shall sections 217 to 226 carry? Carried.

That brings us next to the preamble, government motion 357.

1530

Ms. Smith: Mr. Chair, I understand that we have all-party agreement to deal with the preamble and look at amendments to the preamble.

The Chair: Okay, if you will move it first and then ask for unanimous consent.

Ms. Smith: I'm actually withdrawing 357 and I will be moving 361. I will leave it to my colleague.

The Chair: Motion 357 is withdrawn, bringing us to PC motion 358.

Mrs. Witmer: I move that the preamble to the bill be struck out and the following substituted:

"The people of Ontario, government and licensees of long-termcare homes believe in resident-centred care;

"Remain committed to the provision of care and, the health and well-being of Ontarians living in long-term care homes now and in the future;

"Strongly support collaboration amongst residents, their families and friends, licensees, service providers, caregivers, volunteers, the community and governments to ensure that the care and services are provided to meet the needs of the resident;

"Recognize the principle of providing adequate funding based on assessed needs of residents.

"Recognize that access to community based health care including the care provided in long-term care homes based on assessed need is a cornerstone of an effective health care system;

"Recognize the principle of a common vision of shared responsibility;

"Firmly believe in public accountability and transparency to demonstrate that long-term care homes are funded, governed and operated in a way that reflects the interest of the public, and promotes effective and efficient delivery of high-quality services.

"Firmly believe in clear and consistent standards of care and services, supported by a strong, fair and consistent compliance, inspection and enforcement system;

"Recognize the responsibility to take action where standards are not being met, or where the care, safety, security and rights of residents might be compromised;

"Affirm our commitment to preserving and promoting quality accommodation that provides a safe, comfortable, homelike environment and supports high quality of life for all residents of long-term care homes through a strong, viable and appropriately funded LTC homes sector;

"Recognize that long-term care services must respect diversity in communities;

"Respect the requirements of the French Language Services Act in serving Ontario's francophone community."

The Chair: This motion is out of order and can proceed only with unanimous consent. Do you wish to ask for—

Mrs. Witmer: Sure, I'll ask for unanimous consent.

The Chair: Do we have unanimous consent?

Ms. Smith: Wow, I wish it was 357.1 instead of 361. Sure, we can have unanimous consent.

The Chair: We have unanimous consent.

Mrs. Witmer: I think the attempt here is to ensure that the preamble reflects the need for the government to appropriately fund long-term-care homes in order that they can meet the requirements of meeting the assessed needs of residents. I think it also speaks to the need for some consistency and fairness in compliance, inspection and enforcement systems. Again, it does recognize that there is a need for a strong, viable and appropriately funded long-term-care homes sector. I think the issue of funding really is one that is very important. If we're going to meet the assessed needs of the residents, the funding simply needs to be there.

The Chair: Any other discussion?

Ms. Smith: We don't agree with the recommendations made by Mrs. Witmer in her changes to the preamble. We feel they're better addressed by motion 361. I would just note that we do include the notion of care in our amendment. We also include the notion of mutual respect, which we discussed many times as we were looking at the bill of rights in other sections of the legislation. We also obviously do not agree with her notion that the concept of funding should be included in the preamble. We also note the absence of her support for the not-for-profit sector, which we will be including in our version of the preamble. For those reasons, we feel that motion 361 is more appropriate and we'll not be support-

ing motion 358, but we're delighted to hear one last time Mrs. Witmer's speech on funding etc.

Mrs. Witmer: I'm going to now move away from funding, because the purpose of the preamble here, as it always is—it's a framework of the fundamental beliefs and principles on which you're building your legislation. It also is a guide to what it is you would hope that the legislation would do, and I think that the government's preamble has some gaps.

If you take a look at what we have today, the government's stated principles that they've used in two other key pieces of legislation are being ignored in Bill 140. If you take a look at the Commitment to the Future of Medicare Act and the Local Health System Integration Act, they include the principle of a common vision of shared responsibility, which is not currently here. They have ignored recognition of access to community-based health care, which includes long-term-care homes as a cornerstone of an effective health care system, and they have ignored the belief in public accountability and transparency to demonstrate that the health system is governed and managed in a way that reflects the public interest.

Again, I will go back to what I've said: I do believe it's impossible to effectively and efficiently deliver high-quality services without being appropriately funded.

Ms. Martel: I really like Mrs. Witmer's reference to appropriately funded long-term-care homes, which is why I raised the matter of funding at many points during the review of the bill in my amendments. I wish the government would incorporate that into their preamble, given that the vote on this is going to be very clear.

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

Motion 359.

Ms. Martel: Chair, I wanted to make sure that—wait a minute. I want to see the government's motion.

Ms. Smith: It's the last section, Shelley.

Ms. Martel: Was it in another section of the bill?

Ms. Smith: It's the last section of the new one that you just got.

Ms. Martel: What I've got in motion 361 is, "Are committed to the promotion of the delivery of long-term care home services by not-for-profit organizations," but there's no reference to the Canada Health Act. Did that come before in a previous amendment?

Ms. Smith: No, that's never been there.

Ms. Martel: You know what, then, Chair? I'm going to move this.

I move that the preamble to the bill be amended by adding the following paragraph at the end:

"Commit themselves to upholding the principles and conditions of the Canada Health Act, and support not-for-profit provision of long-term care."

I ask for unanimous consent.

The Chair: I have to rule it out of order because it applies to the preamble. It would be necessary for you to request unanimous consent.

Ms. Martel: I request unanimous consent.

The Chair: There's a request for unanimous consent.

Ms. Smith: No good deed goes unpunished. She has unanimous consent.

The Chair: I'll take that lengthy answer as a "yes." We have unanimous consent.

Ms. Martel: If I might, Chair, there are two principles here that I would like to see incorporated in the preamble. One is the support for not-for-profit provision of long-term care. The government does reference that in their motion and I want it to be included, which is why I referenced it in mine. Secondly, I think it's important as well that we include a reference to the Canada Health Act, in particular, "Commit themselves to upholding the principles and conditions of the Canada Health Act...." If I recall, that was probably part of the preamble of Bill 8, and I think it was part of the preamble of Bill 36. It was also strongly recommended by the Registered Nurses Association of Ontario. So I think this particular provision should be added so that it recognizes both a support for not-for-profit provision of long-term care and a commitment to uphold the principles and conditions of the Canada Health Act.

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

NDP motion 360.

Ms. Martel: Chair, I'm going to withdraw this because the commitment to continuous quality improvement made its way into some amendments in the bill earlier on.

The Chair: Okay. That brings us to government motion 361, which was distributed separately.

Ms. Smith: I move that,

1. the fourth paragraph of the preamble to the bill be struck out and the following substituted:

"Strongly support collaboration and mutual respect amongst residents, their families and friends, long-term care home providers, service providers, caregivers, volunteers, the community and governments to ensure that the care and services provided meet the needs of the resident and the safety needs of all residents;"

2. the eighth paragraph of the preamble to the bill be struck out and the following substituted:

"Recognize the responsibility to take action where standards or requirements under this act are not being met, or where the care, safety, security and rights of residents might be compromised;"

3. the preamble to the bill be amended by adding the following paragraphs at the end:

"Recognize the importance of fostering the delivery of care and services to residents in an environment that supports continuous quality improvement;

"Are committed to the promotion of the delivery of long-term carehome services by not-for-profit organizations."

The Chair: Thank you. This motion is out of order.

Ms. Smith: I seek unanimous consent to deal with this motion.

The Chair: Do we have unanimous consent? Agreed. Yes, we do.

Ms. Smith: We've heard a lot of discussion about the upcoming amendments to the preamble, so here they finally are. We've tried to address the issue of group rights versus individual rights through the inclusion of "mutual respect." We were asked to try to include and address the issue around safety needs, and we have done so through the inclusion of "meet the needs of the resident and the safety needs of all residents...." We heard from our providers that they wanted to be included in the list of people who strongly support collaboration and mutual respect, and we've included them. We are including the notion of continuous quality improvement, as was requested by the OMA and others. As well, we are including our commitment to the promotion of the delivery of long-term-care-home services by not-for-profit organizations.

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

Shall the preamble, as amended, carry? Carried.

Shall the title of the bill carry? It is carried.

Shall Bill 140, as amended, carry?

Lastly, shall I report the bill, as amended, to the House? It is carried.

That concludes the bill. Thank you very much. I have truly appreciated the professional approach taken by everyone on this very serious bill.

Mrs. Witmer: Thank you very much, Mr. Chair. You did an excellent job.

The Chair: I appreciate that. We are adjourned.

The committee adjourned at 1543.

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