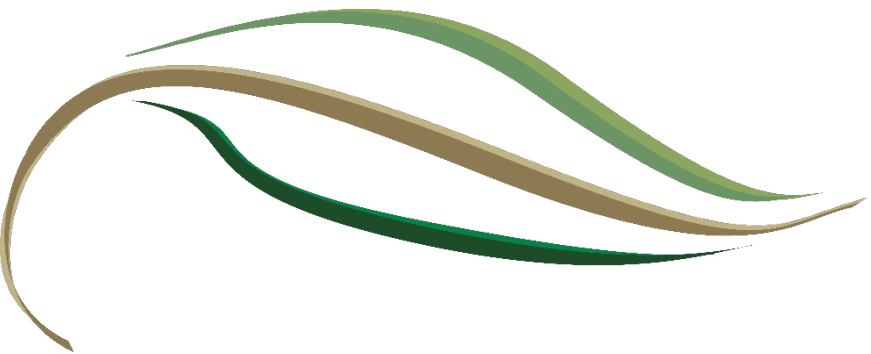


# Post-Pandemic Legislative Initiatives in Long Term Care

Presented by Al Jina, Park Place Seniors Living



Canadian Elder Law Conference  
November 9, 2023  
Vancouver, B.C.

# Post Pandemic Legislation

The COVID-19 pandemic caused severe social and economic disruption, especially in long term care.

During the public health emergency, long term care was strongly impacted with lockdowns, severe restrictions on visitation, infection prevention controls, mask mandates, testing and screening, single site orders, and other restrictions imposed by public health orders.

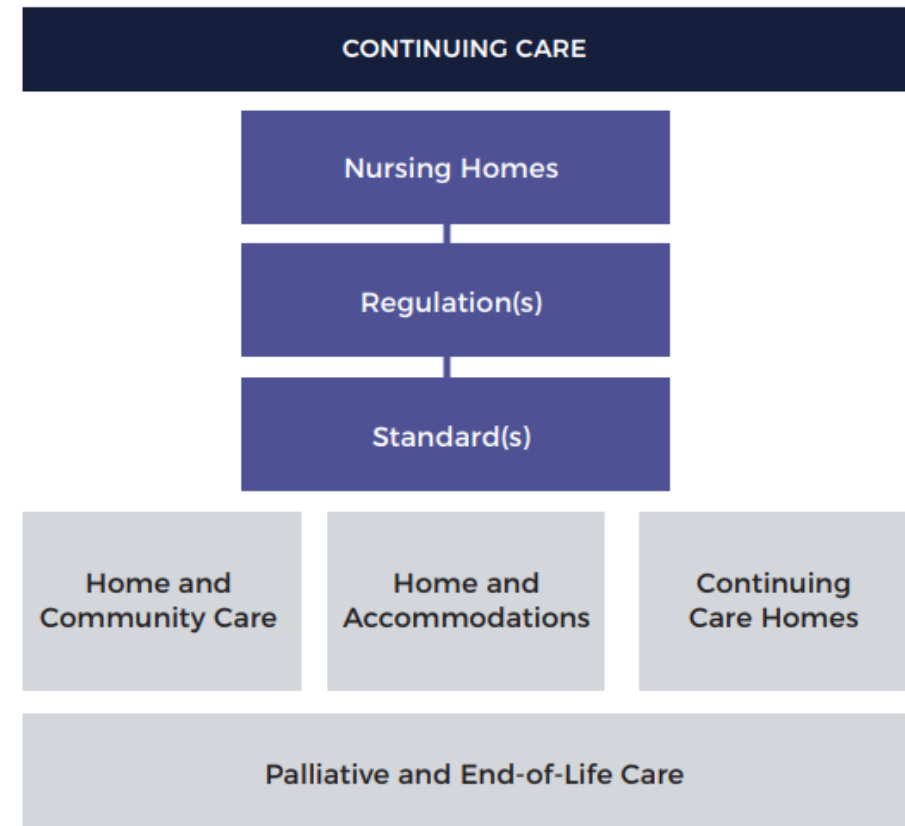
Following the pandemic, several governments responded to the crisis by introducing new legislation intended to better protect seniors in long term care.

These legislative initiatives include:

1. Continuing Care Act (Alberta), S.A. 2022, c.C-26.7
2. Fixing Long Term Care Act (Ontario), S.O. 2021, c.39
3. Federal Consultation to develop a Safe Long Term Care Act
4. Federal Bill C-295, An Act to amend the Criminal Code (neglect of vulnerable adults)
5. Legislative/regulatory initiatives to improve licensure processes for internationally educated nurses

# The Continuing Care Act, Alberta

- Introduced March 28, 2022
- Implementation anticipated in 2024
- Legislative framework foundational in supporting the broader Continuing Care System Transformation



## Alberta Continuing Care Association's Stance

- Inadequate sector consultation
- Agreement with progression towards a regulatory environment that prioritizes resident and client quality of life
- Concern for over-regulation and administrative burden
- Need for a framework that treats operators as partners/provides clear regulations and standards
- The position paper by the Alberta Continuing Care Association is attached to this presentation



# Areas of Concern

- Lack of detailed regulations content - leaving room for interpretation
- Financial penalties
- Negative impact on trust between operators and Alberta Health/AHS
- Impact of regulations on financial and human resources

# Legal / Regulatory Dimensions to Consider

Reduce areas of legal uncertainty	<ul style="list-style-type: none"><li>• Current legislative framework is fragmented</li><li>• Bill 11 creates new areas of legal uncertainty</li></ul>
Improve efficiency	<ul style="list-style-type: none"><li>• Should not unnecessarily tax the limited resources of operators or the health authority</li><li>• Help strengthen dispute resolution process</li><li>• Continue reliance on voluntary reporting by operators</li></ul>
New legislation and regulations should focus on remedial actions instead of punitive sanctions	<ul style="list-style-type: none"><li>• It is necessary to build collaborative steps in the regulatory framework</li><li>• Operators must be given an opportunity to submit a plan to remedy any deficiencies</li></ul>

# Areas of Concern

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Section 14(2).  
A license can  
only be issued  
for up to 4  
years.

Operators will have to apply for a license every 4 years

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Unnecessarily increases the administrative  
burden of compliance

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Will make it difficult for operators to secure financing of  
mortgages over longer terms (e.g. 25 years)

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Operators may have to develop contingent plans  
if they are unable to renew their mortgages

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# Areas of Concern

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Section 15. If there is a refusal of license renewal, the operator has to wait 2 years before reapplying.

During the 2-year waiting period:

All elderly residents will have to be moved out

All staff will have to be laid off

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After the 2-year waiting period:

All elderly residents will have to be readmitted

Staff will have to be hired or rehired and trained

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It will be very onerous on the resources of HA and operators

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# Offences and Penalties

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## Impact & necessity of fines

Section 48 sets extremely high and unnecessary fines

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Fines are not required for enforcement as AH has numerous other remedies with AHS to address non-compliance

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Fines generally are an ineffective punitive tool that does not lead to collaboration or incentives

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# Personal Liability

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Long term care operators take the position that personal liability should not be imposed on officers, directors, and agents of a corporation

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Provisions do not recognize the difficulty in recruiting and retaining Directors and adding to the personal risk they already endure through monetary penalties is not fair

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Personal Liability insurance is extremely difficult and costly to acquire and would severely impact the sustainability of CC services and staffing

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Staff should not be held personally liable for organizational, or wider systemic failures

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Clarity is necessary on whether the term “corporation” under Section 48 (2), includes a society

# Vicarious Liability

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This section presumes guilt even if the employee or agent has not been prosecuted for the offence

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This is extremely difficult to track and there is immense vulnerability for staffing in this area

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The industry has significant difficulty attracting staff to hold leadership positions – this will only compound this issue and hinder good talent to take on Director of Care and leadership positions

# The Fixing Long Term Care Act, Ontario

During the COVID-19 pandemic, the Government of Ontario established a Long-Term Care COVID-19 commission to investigate:

- How and why COVID-19 spread in long-term care homes
- Actions that need to be taken to prevent the spread
- How key elements in the existing long term care system affected the spread of COVID-19

- The commissioners issued their report on April 30, 2021.
- The commissioners recommendations led to the creation of the Fixing Long Term Care Act.
- The Fixing Long Term Care Act was proclaimed into force on April 11, 2022.

The act generally maintained the status quo set out in the Long Term Care Homes Act, 2007.

However, it made significant changes relating to:

- Staffing and care
- Accountability and transparency
- Enforcement
- Licensing

Generally, the Fixing Long Term Care Act of Ontario takes a highly prescriptive approach compared to similar legislation in Alberta and B.C.

The Fixing Long Term Care Act is 169 pages long. In comparison, the Alberta Continuing Care Act is more comprehensive as it also covers home care, and it comes in at a remarkably short 67 pages.



The highly prescriptive nature of the Ontario statute can lead to regulatory gridlock and reduce resiliency as well as responsiveness to new and emerging issues.

A further, more detailed discussion of the Fixing Long Term Care Act is beyond the scope of this presentation.

# Federal Consultation to Develop a Safe Long Term Care Act

The COVID-19 pandemic placed a national spotlight on Canada's long term care sector and galvanized support for new national standards.

As part of the Liberal-NDP Confidence and Supply Agreement, the federal government committed to introducing a Safe Long Term Care Act.

On July 21, 2023, the federal Ministry of Health launched consultations to gather feedback from the long term care sector on the design of the proposed Act.

A Discussion Paper was issued which outlined the goals and direction of the federal government.

The vision for the act is "to outline a pan-Canadian vision and principles for the safe operation and delivery of care in long term care homes to reflect the new national standards..."

The Discussion Paper highlights the investments by the federal government to support the long term care sector, namely:

- \$1 billion Safe Long Term Care Fund announced in the 2020 Fall Economic Statement
- \$740 million to support vulnerable populations through infection prevention and control measures
- \$3 billion over 5 years for workforce stability, accreditation, regular inspections, announced on February 7, 2023
- \$1.7 billion over 5 years to support hourly wage increases for personal support workers, announced in the Budget 2023



The Discussion Paper acknowledges the jurisdiction of the Provinces and Territories over long term care and that it will be respected by the federal government.

The Discussion Paper noted that the federal government was responsible for providing or funding access to long term care for indigenous people and solicited feedback.

In response, approximately 15 long term care administrators in B.C. and Alberta recommended as follows:

Access to LTC for indigenous people: Elderly indigenous people can face enormous challenges accessing LTC due to low literacy levels and as they may not have capable relatives who can be given a Power of Attorney to assist with decision-making. As a result, tax returns may not be filed, and they may have difficulty accessing subsidized LTC services even though they are low-income. We recommend creating a low-cost pension administrator service to assist elderly indigenous people. The pension administrator organization should be structured similar to the Bloom Group in BC.

Submissions made by the B.C. Care Providers Association and the Canadian Association for Long Term Care are attached to this presentation.

The consultation period is now closed and we are awaiting next steps.

# Federal Bill C-295, An Act to amend the Criminal Code (neglect of vulnerable adults)

This is a private members bill sponsored by Vancouver Centre MP Hedy Fry.

It has been introduced for third reading in the House of Commons.

The bill amends sections 214, 215 and 718.21 of the Criminal Code to specifically criminalize owners and managers of long term care homes who fail to provide the "necessaries of life" to people living in their care homes.



Long term care operators have serious concerns about the impact of the proposed legislation on:

- Recruitment and retention of nurses and frontline health care workers
- Volunteer Boards of Directors of non-profit long term care homes

The following attachments to this presentation provide some helpful background:

- Submission by the Canadian Long Term Care Association
- Templates of letters to federal Members of Parliament and provincial Ministers of Health
- Submission by Sienna Seniors Living

## Legislative/regulatory initiatives to improve licensure processes for internationally educated nurses

In Canada, the pandemic exacerbated vulnerabilities and deficits in the long term care workforce.

To practice in Canada, internationally educated nurses must have their foreign credentials assessed against Canadian standards and approved by relevant provincial regulatory colleges.

This process is complex, lengthy, expensive, and imposes a significant barrier to the employment of internationally educated nurses.

To lower these barriers, there are currently several initiatives underway in Canada to improve and streamline licensure processes.

Attached to this presentation is a paper which provides helpful background by the B.C. Care Providers Association titled "Jurisdictional Scan of Credential Recognition for Internationally Educated Nurses (IENs) in Canada and Abroad".

## About Park Place Seniors Living

Park Place Seniors Living is family owned company, founded, owned and operated by Al & Jenny Jina. Al is a lawyer by profession and Jenny is a nurse who specializes in geriatrics and adult education.



Owner Al Jina (left) with a Park Place resident and her husband.

The company was founded 30 years ago with one private Care Home in Nelson B.C. Since then, the company has steadily grown and now operates homes in B.C., Alberta, and Ontario.

Park Place provides a continuum of care from independent living to assisted living to complex care, dementia care and palliative care. All complex care homes are accredited. All sites are owned and operated by the company from a small head office in Vancouver, B.C.

Park Place Seniors Living works in partnership with ten regional health authorities in Alberta, British Columbia, and Ontario.

***Enriching the Lives of Seniors***



## INTRODUCTION

ACCA operators overwhelmingly agree with the general intent and direction of the proposed *Continuing Care Act, Bill 11*. The resident-focused language used in the proposed legislation, such as “continuing care home” is applauded by operators, as it is reflective of a shift away from institutional care language, and progression towards a regulatory environment that prioritizes resident and client quality of life.

There are, however, some potential implications for the continuing care (CC) system that need to be reviewed and addressed. The key to the implementational success of Alberta’s proposed *Continuing Care Act* lies in the legislation fostering a collaborative framework that treats operators as partners in planning and decision-making.

Among the most potentially concerning implications of *Bill 11*, in its current state, is the great number of regulations which it appears to infer, which would likely add complexity to CC operations, when a shift from overregulation and simplifying administrative processes is more ideal. Clarity and transparency on the quantity and scope of regulations planned is necessary, with fair opportunity facilitated to allow all key stakeholders to review and comment on regulations before they are passed.

## ACCA RECOMMENDATIONS

The following are recommendations regarding some of the provisions included in *Bill 11*, which may warrant review and/or impact the potential effectiveness of the *Continuing Care Act*.

BILL CONTENT	ACCA RECOMMENDATIONS
<b>DIVISION 1 FACILITY-BASED CARE</b>	
<b>Continuing care home accommodation charge</b> 9 (1) In this section, “accommodation charge” means the charge a resident of a continuing care home is required to pay to the continuing care home operator for the prescribed accommodation goods and services referred to in section 1(h)(i). (2) Subject to subsection (3), a resident of a continuing care home shall pay an accommodation charge in accordance with this section and the regulations. (3) The Minister may exempt a resident from paying the accommodation charge, in whole or in part, in accordance with the regulations.	<b>Recommendations:</b> <ul style="list-style-type: none"> <li>The Act should identify the actions that an operator may take in the event of default on accommodation payments.</li> <li>In the event that the Minister may exempt a resident from paying the accommodation charge, there should be reference to the manner in which the outstanding fees will be paid.</li> </ul>
<b>PART 3 LICENSING</b>	
<b>Licence required</b> 13 (1) No continuing care home operator shall operate	<b>Recommendations:</b> <ul style="list-style-type: none"> <li>As Alberta transitions towards a more formal licensing system (similar to B.C), more details on the licensing framework are</li> </ul>



EngAgeBC

**STRENGTHENING QUALITY & SAFETY IN  
CANADA'S LONG-TERM CARE SECTOR:**

A RESPONSE TO THE PUBLIC CONSULTATION  
ON THE SAFE LONG-TERM CARE ACT

**SEPTEMBER 2023**





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## Development of a Federal Safe Long-Term Care Act: A Submission from the Canadian Association for Long Term Care

August 24, 2023

As the national association representing 16 of Canada's largest provincial long term care (LTC) associations and long term care home operators, the Canadian Association for Long Term Care (CALTC) is uniquely placed to identify the needs of the sector and provide critical and thoughtful feedback as the government proceeds with the development of a Safe Long-Term Care Act.

A national Safe Long Term Care Act has the potential to enhance long term care in Canada, aligning expectations across all provinces and territories to support resident and employee safety. This represents a significant opportunity to improve quality of life and care for Canadians living in long term care — and we agree that this must be done with engagement and guidance from stakeholders, and in partnership with the long term care sector.

Given that long term care falls under provincial jurisdiction in Canada, there are many questions and concerns that could potentially arise during the development of this federal act. For example, if long term care homes will be expected to meet national standards, but adequate provincial funding and resources that match the level these standards demand are not made available, homes will be left in a situation where they cannot meet the required standards or the expectations of families, residents, and staff. We appreciate that the discussion paper presented alongside this consultation touches on some of these jurisdictional questions but believe that this issue must be explored further. CALTC shares in the vision of safe, quality long term care for everyone in Canada; and looks forward to seeing legislative processes put into place that support collaboration between all levels of government and the long term care sector itself. CALTC sincerely appreciates the opportunity to participate in this consultation process.

### Introduction

Since the start of the COVID-19 pandemic, CALTC has made significant strides forward in a range of initiatives aimed at improving the quality of care in long term care homes. A few examples include:

- In partnership with the Public Health Agency of Canada and the Mental Health Commission of Canada, CALTC developed a customization of The Working Mind program for the long term care sector. This program works to equip long term care homes with the capacity to deliver training that builds a common baseline of knowledge around mental health; what it is, why it matters, and what to do when mental health needs are identified in yourself or a peer.
- In partnership with Pallium Canada, we have delivered three series of courses on palliative care for long term care leaders and family members across Canada. In addition to unpacking the role of long-term care leaders, administrators and family members in





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## Addressing Issues in Bill C-295

### Summary of the Legislation

On June 20, 2022, Bill C-295 was introduced to the House of Commons and recently went through consideration in the Standing Committee on Justice and Human Rights. This Bill seeks to amend the Criminal Code to create a specific offence for long-term care owners and officers for failing to ensure the “necessaries of life” are provided to vulnerable adults.

While CALTC and its members applaud some of the amendments made by the Standing Committee on Justice and Human Rights, we remain concerned that the Bill remains fundamentally flawed. The Committee addressed some of the major concerns about Health Human Resources (HHR), but failed to address expanding the scope of the Bill to not specifically limit it to long-term care which will result in inequities in recruitment and retention for LTC homes alone.

It also still does not address the true issues to improving long-term care in Canada which is due to significant and severe structural issues including widespread staffing shortages, ageing infrastructure and chronic underfunding. Decades of underinvestment laid the foundations for a perfect storm which painfully played out through the pandemic, and homes continue to struggle.

### Details of the Bill

A copy of the legislation can be found [here](#).

### New Definition of Officer

The Standing Committee on Justice and Human Rights has amended the language around “Manager” and has replaced it with the term “officer” as an attempt to narrow the focus of responsibility to owners and other decision makers in high-level positions.

An excerpt from the Bill: “Officer means the chairperson of the board of directors, the president, a vice-president, the secretary, the treasurer, the comptroller, the general counsel, the general manager or a managing director of a long-term care facility, any other person who performs functions for a long-term care facility similar to those normally performed by a



MP <Name>  
<Office Address>  
<City> <Province>  
<Postal Code>

Dear Member of Parliament <Last Name>:

I am writing to you regarding the progress of Bill C-295, an Act to amend the Criminal Code (neglect of vulnerable adults), legislation currently being considered by the House of Commons.

Bill C-295 was introduced last year as a private member's bill and has subsequently gone to the Standing Committee on Justice and Human Rights. The Committee's report was presented in the House of Commons on June 9, 2023 including the amendments made in Committee. The legislation would create a new criminal liability for owners and officers in long-term care homes for failing to provide the necessities of life.

Our initial concerns centred around the potential impact of this legislation on the recruitment and retention of frontline health care workers and nurses. The original broad language of the Bill threatened to capture a significant number of these indispensable frontline professionals, a development that would have posed significant challenges for the sector and we are pleased to see that language has been amended. However, with the change in focus of the Bill to Officers, it creates another recruitment challenge for long term care leadership positions. It will not be possible to advance new standards or quality improvement initiatives without strong leadership in the homes, and this Bill now directly puts that at risk.

There are still some serious concerns about the impact of this legislation on the sector. In particular, the potential impact on volunteer Boards of Directors which is the foundation of governance in non-profit long term care homes as this amendment to the criminal code may significantly limit interest in the volunteer Director role. In addition, The Bill still has potential issues with jurisdictional overreach as provinces and territories are responsible for most long-term care support and therefore has not addressed how current provincial and territorial legislation and regulations will work with this Bill.

We urge you to gather support from fellow Parliamentarians and vote against this bill.

We believe the Federal Government's efforts would be better placed in developing national strategies for health human resources, such as removing barriers to immigration and investing in long-term care homes, particularly the ageing infrastructure. This is key to raising the standard of care. In addition, consultations are beginning for the development of the Safe LTC Act, of which issues such as

Hon. <Name>  
Minister of <Portfolio>  
<Address>  
<City> <Province>  
<Postal Code>

Dear Minister, <Last Name>:

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We urge you to reach out to your federal counterparts to express concerns regarding this Bill, its anticipated impact on the long-term care sector, and outstanding questions on jurisdiction.

We believe the federal government's efforts would be better placed in developing national strategies for health human resources, such as removing barriers to

Submission to the Standing Committee  
on Justice and Human Rights

Study of Bill C-295, An Act to amend the Criminal Code  
(neglect of vulnerable adults)

Submitted by Sienna Senior Living

**Sienna**  
Senior Living

12/07/2023



## Jurisdictional Scan

Jurisdictional Scan of Credential Recognition  
for Internationally Educated Nurses (IENs)  
in Canada and Abroad



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