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# Bill 203

**An Act respecting the rights of persons receiving care, support or services in  
congregate care settings and their caregivers**

**Mrs. L. Gretzky**

**Private Member's Bill**

1st Reading      September 16, 2020

2nd Reading

3rd Reading

Royal Assent



## EXPLANATORY NOTE

The Bill enacts the *More Than a Visitor Act (Caregiving in Congregate Care Settings), 2020* which requires the Minister to respect and promote certain rights for persons receiving care, support or services in congregate care settings and their designated caregivers. The Minister is also required to safely integrate designated caregivers that were excluded because of the COVID-19 pandemic back into congregate care settings. The Minister is also required to improve respect for the role of the designated caregiver within congregate care settings and to develop and implement a caregiving strategy in consultation with specified stakeholders. The strategy is to be reviewed and updated every five years and is to be published on a Government website. An interim strategy that incorporates the rights of individuals receiving care, support or services in congregate care settings to have meaningful access to their designated caregiver is to be in effect for the first year.

**An Act respecting the rights of persons receiving care, support or services  
in congregate care settings and their caregivers**

**Preamble**

The Government of Ontario,

Considers it important to protect the rights and well-being of persons receiving care, support or services in congregate care settings;

Acknowledges that persons receiving care, support or services in congregate care settings can designate one or more caregivers to partner in their care or support;

Acknowledges that a person receiving care, support or services in a congregate care setting should not be prevented from accessing their designated caregivers, especially in times of crisis or emergency, and supports that processes must be developed to safely facilitate this;

Agrees that the care provided by designated caregivers does not replace the formal care provided by paid workers in health care, developmental services and related sectors; and

Wants to stabilize staffing in congregate care settings so the role of designated caregivers can be to supplement care and support.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Interpretation**

**1** (1) In this Act,

“congregate care setting” includes,

- (a) a long-term care home within the meaning of the *Long-Term Care Homes Act, 2007*,
- (b) a retirement home within the meaning of the *Retirement Homes Act, 2010*,
- (c) a private hospital within the meaning of the *Private Hospitals Act*,
- (d) a hospital within the meaning of the *Public Hospitals Act*,
- (e) an independent health facility within the meaning of the *Independent Health Facilities Act*,
- (f) a hospice or other facility that provides palliative care services,
- (g) on and after the day prescribed by the Minister, a dwelling or premises in which home and community care services are provided that include residential accommodation within the meaning of the *Connecting Care Act, 2019*,
- (h) a site operated by a supportive housing provider, including an assisted living facility,
- (i) an intervenor services residential site,
- (j) a residential group home for those with developmental disabilities,
- (k) a children’s residence within the meaning of section 243 of the *Child, Youth and Family Services Act, 2017*,
- (l) a place of secure custody, a place of open custody, a place of open temporary detention or a place of secure temporary detention within the meaning of the *Child, Youth and Family Services Act, 2017*,
- (m) a site providing residential or emergency residential services under the Violence Against Women Support Services program or the Anti-Human Trafficking Community Supports program, and
- (n) an emergency homeless shelter; (“habitation collective”)

“designated caregiver” means an individual described in section 3; (“aidant naturel désigné”)

“Minister” means the minister to whom the administration of this Act is assigned under the *Executive Council Act*. (“ministre”)

### **Persons in congregate care settings**

(2) In this Act, a reference to a person receiving care, support or services is a reference to a person receiving care, support or services in a congregate care setting.

### **Roles, etc., of workers in congregate care settings**

(3) Nothing in this Act changes the roles and responsibilities of workers in congregate care settings or affects their collective bargaining rights.

### **Application of other Acts**

(4) Nothing in this Act overrides the application of the *Substitute Decisions Act, 1992*, the *Personal Health Information Protection Act, 2004* or the *Health Care Consent Act, 1996*.

### **Duties of the Minister**

2 (1) The Minister shall,

- (a) ensure that a person receiving care, support or services has access to their designated caregiver by ensuring that designated caregivers are safely integrated into congregate care settings after being excluded because of the COVID-19 pandemic;
- (b) provide support, resources and training to the operators of congregate care settings to improve understanding and respect for the role of designated caregivers as partners in care or support; and
- (c) ensure that operators of congregate care settings have the resources to implement the caregiving strategy and the rights set out in this Act.

(2) For the purpose of ensuring that designated caregivers are safely integrated into congregate care settings under clause (1) (a), the Minister shall ensure that infection control protocols for congregate care settings include a way to safely integrate caregivers during a crisis or emergency.

### **Designated caregiver, criteria**

3 (1) For the purpose of this Act, an individual who meets the following criteria is a designated caregiver:

1. The individual continuously or occasionally provides significant, unpaid, non-professional support to a person receiving care, support or services.
2. The individual shares an emotional bond with the person receiving care, support or services.
3. The individual has been designated to be the person's caregiver for the purpose of this Act by,
  - i. the person receiving care, support or services, or
  - ii. a substitute decision-maker, within the meaning of the *Health Care Consent Act, 1996*, of the person mentioned in subparagraph i.

### **Same, examples**

(2) A designated caregiver may be a family member, a neighbour, a friend, a support person, an attorney for personal care or property under the *Substitute Decisions Act, 1992* or another similar type of person.

### **More than one caregiver**

(3) For greater certainty, more than one individual may be designated to be a person's caregiver under paragraph 3 of subsection (1).

### **Revocation of designation**

(4) For greater certainty, a designation made under paragraph 3 of subsection (1) may be revoked at any time by a person mentioned in that paragraph.

### **Rights of persons receiving care, support or services and designated caregivers**

4 (1) The Minister shall ensure that the following rights are fully respected and promoted:

1. A person receiving care, support or services has the right to access their designated caregiver in accordance with their needs and preferences.
2. A person receiving care, support or services has the right that their designated caregiver not be treated merely as a visitor.
3. A person receiving care, support or services has the right to choose to have their designated caregiver participate in and be fully informed of decisions regarding the person and to choose the degree of participation.
4. A person receiving care, support or services has the right to communicate in confidence, in their preferred manner and without interference, with their designated caregiver.

5. Both a person receiving care, support or services and their designated caregiver have the right to be treated with dignity and respect.

#### **Guide to interpretation**

- (2) This Act shall be interpreted so as to advance the objective that the rights set out in subsection (1) be respected.

#### **Emergency, rights continue**

- (3) For greater certainty, the rights set out in subsection (1) remain in effect during a crisis or emergency.

#### **Caregiving strategy**

**5** (1) No later than the first anniversary of the day this Act receives Royal Assent, the Minister shall develop and implement a caregiving strategy that,

- (a) implements the rights set out in subsection 4 (1);
- (b) prevents the Government from unilaterally developing policies regarding the role of designated caregivers with respect to persons receiving care, support or services; and
- (c) includes a staffing strategy for each type of place listed in the definition of “congregate care setting” in subsection 1 (1) to ensure that the role of designated caregivers is to supplement care or support.

#### **Principles**

(2) The caregiving strategy developed under subsection (1) is to be based on the following principles:

1. The rights of persons receiving care, support or services are to be respected and upheld at all times, including during times of crisis or emergency.
2. Designated caregivers should be distinguished from visitors.
3. The presence of the designated caregiver is vital to the well-being of the person receiving care, support or services and the absence of the designated caregiver may result in increased risk of unintentional harms, including increased risk of emotional, mental and physical harms.

#### **Five-year review, caregiving strategy**

**6** No later than the second anniversary of the day this Act receives Royal Assent, and at least every five years thereafter, the Minister shall review and update the caregiving strategy then in effect.

#### **Consultation**

**7** The Minister shall consult the following persons in developing, reviewing and updating the caregiving strategy:

1. Persons receiving care, support or services.
2. Caregivers and bodies or groups representing caregivers.
3. Health and support service providers.
4. Staff in congregate care settings and groups representing staff in congregate care settings.
5. Researchers and experts in relevant sectors.

#### **Publication**

**8** The Minister shall make the caregiving strategy and each update available to the public on a website of the Government of Ontario.

#### **Interim caregiving strategy**

**9** (1) No later than one month after the day this Act receives Royal Assent, the Minister shall develop and implement an interim caregiving strategy that promotes and incorporates the rights set out in subsection 4 (1).

#### **Interim strategy, in effect**

(2) The interim caregiving strategy shall be in effect until the first anniversary of the day this Act receives Royal Assent.

#### **Commencement**

**10 This Act comes into force on the day it receives Royal Assent.**

#### **Short title**

**11 The short title of this Act is the *More than a Visitor Act (Caregiving in Congregate Care Settings), 2020.***