The Manitoba Association of Residential & Community Care Homes for the Elderly (MARCHE) is a newly re-configured provincial association and the collective voice of twenty five (25) community owned, non-profit personal care homes formerly known as the Non Profit Long Term Care Association of Manitoba (NPLTCA) the members of which are listed on the last page of this presentation.

Presentation to the Bill 6 Legislative Committee

By: Gerald Pronyk, Board Chairman, Manitoba Association of Residential & Community Care Homes for the Elderly (Marche) - June 11, 2012

My name is Gerald Pronyk and I am the Board Chairman of The Manitoba Association of Residential & Community Care Homes for the Elderly (MARCHE) which is a newly re-configured provincial association and the collective voice of twenty five (25) community owned, non-profit personal care homes throughout the Province formerly known as the Non Profit Long Term Care Association of Manitoba (NPLTCA).

Our MARCHE members are deeply concerned with respect to the provisions of Bill 6 on private health care organizations which we believe unilaterally enhance bureaucratic control in several areas that our members believe are crucial to the autonomy of private organizations and their ultimate ability to carry out their mission, including resident care. Non-profit organizations are no less private and proprietary, no less a part of civil society, than are commercial operations. Despite this, we are distressed to find that the government increasingly views our members as an extension of government. We in the non-profit sector find our autonomy threatened and our property rights jeopardized even more than the commercial sector.

It is one thing to enhance the accountability and efficiency of government bureaucracies. That is one dimension of Bill 6, and we take no position on these provisions. It is quite another to give bureaucracies new powers to intrude on aspects of great sensitivity and importance to autonomy of private institutions, including their ability to select and compensate their leaders and control their own operating surpluses. Private institutions are an integral part of a free society. Their existence in the health care sector means that there is more variety and choice in the system for residents and service providers. There is more opportunity for innovation and experimentation. Different groups of supporters, leaders and providers, with their distinctive ideas, traditions, experience and visions, can find distinctive ways to understand and meet the needs of residents and their families.

1. BILL 6 CONTRAVENES LONG STANDING NEGOTIATED AGGREEMENTS

Bill 6 unilaterally overrides long standing agreements that have been negotiated between the government and our members which provided assurances for those elements which Bill 6 attempts to restrain.

Specifically:

- Bill 6 is contrary to the provisions of the service purchase agreements currently in existence with all PCHs concerning:
    - property ownership, and rights for private organizations to retain and apply at their own discretion, savings resulting in operational surpluses they achieve through efficient operation; and,
    - the right of private organizations to hire their own senior staff, and acknowledge that compensation arrangements can and do vary with circumstances in each respective PCH facility;
- Bill 6 is contrary to the Faith-Based Agreement of 1999. Leadership is absolutely crucial to the ability of faith-based organizations to realize their distinctive missions. Bureaucratic interference in selection and retention of leaders threatens the autonomy of faith-based organizations at the most fundamental level. The sponsors of faith-based organizations also invest time, labour and money in them, and their ability to use their assets to achieve their missions is also of crucial importance;

The current negotiated Service Purchase Agreements (SPAs) for MARCHE PCHs provide:

Article 1.5: The WRHA acknowledges and respects that the PCH Corporation is an independent and autonomous entity which has full and unrestricted rights and control of all matters relating to ownership of its property and assets, its corporate structure, its sponsorship, governance and mission; subject to any restrictions imposed by statute or regulation.

Article 1.6: The parties wish to embody the principles of the Agreement on Faith Related issues between the Government of Manitoba, and the PCH Health Corporation.

Article 5.10: With the intent of promoting collaboration, the WRHA and the PCH Health Corporation may each seek consultative input from the other as part of the due diligence process in the selection and evaluation of its respective Executive Director/Chief Executive Officer/ Chief Operation Officer. The consultative input will be of an advisory nature only, and will not bind the respective board of directors of either party.

Article 6.6: The financial resources allocated to the PCH Health Corporation shall include funding for management and staff for the Personal Care Home. The level of funding for an ED/CEO will depend on the circumstances of the PCH Health Corporation, and this funding shall be included in the funding allocation for management for the Personal Care Home.

Article 11.6: The WRHA recognizes the need to provide incentives for efficient management across the system and consequently it is agreed that the PCH Health Corporation may unconditionally retain the greater of 50% of its operating surplus in any Fiscal Year and 2% of the global budget indicated in its funding letter from the WRHA for such Fiscal Year. Any surplus beyond the foregoing levels shall be remitted to the WRHA on demand.

Article 21.2: The PCH Health Corporation retains the sole right to appoint, evaluate, and terminate its ED/CEO and all staff, including, without limitation, all medical staff.

To reiterate –Bill 6 is inconsistent with this whole range of carefully-negotiated and longstanding agreements to protect the autonomy of private institutions.

2. **<u>RHAS CONTROL OF SURPLUS OPERATING FUND AND FUNDS FROM ANCILLARY SERVICES MAY BECOME A DISINCENTIVE FOR ORGANIZATIONS TO BE EFFICIENT AND INNOVATIVE IN THEIR OPERATIONS.</u>**

Bill 6 authorizes Cabinet to regulate the use, disposition or transfer of a health corporation's surplus operating funds or funds from operating ancillary services.

- Whereas Article 11.6 of the SPA incentivizes efficiency by private corporations, and permits them substantial control over their operational surpluses, Bill 6 grants the government unlimited authority to regulate, prohibit or restrict the use of such surpluses.

- Private corporations would lose the ability to direct the benefits of money saved through their innovation and efficiency for such purposes as providing additional services for patients or residents, or returning the money to its sponsor faith community to use for other purposes such as assisting the needy.

- Bill 6 does not define "ancillary service" and its potential scope of application is unknown. It obviously extends to operations such as gift shops or hair salons, but could it also extend to operations such as fund raising arms of an organization?

3. **<u>BILL 6 CREATES UNNECESSARY NEW MECHANISMS FOR BUREAUCRATIC CONTROL OVER CONTRACTUAL ARRANGEMENTS FOR ORGANIZATIONAL LEADERS</u>**

With respect to health corporations or designated health care organizations, as with RHAs themselves, parallel provisions regarding hiring and compensating organizational leaders are contained within Bill 6 as follows:

- the RHAs can, subject to the Minister's approval, establish policies on compensation payable to CEOs and other senior officials; Bill 6, s.12 – proposed s. 51.3(1);

- the employers must submit proposed employment contracts (which includes any amendments to, or extension or renewal of an existing employment contract) to the RHA for review; Bill 6, s.12 - proposed s.51.3(3);

- the contract is void unless the RHA confirms it is consistent with compensation policy; Bill 6, s.12 - proposed s.51.3(4);

- RHAs would also acquire, for the first time, the power to issue directions concerning the process for hiring the CEO or any senior officer of a health corporation; Bill 6, s.8 - proposed s.29.1.(2).

Concerns:

- Bill 6 would create new mechanisms for bureaucratic control – such as the issuance of policies on compensation and reviewing contracts – that are not subject to the constraints concerning the issue of directions by RHAs which currently exist in *The Regional Health Authorities Act*. These constraints were enshrined in the legislation as a result of significant lobbying efforts by our members who were very concerned about the potential for intrusion into the autonomous governance of their organizations by an unrestricted ability of the RHAs to issue directions. To now be able to effectively circumvent these constraints through the issuance of policies is contrary to the principles adopted when the legislation was put in place;

- The new, unconstrained authority vested in the RHAs over the selection and compensation of senior leaders is an unprecedented interference in the autonomy of private health organizations;

- The direction-making power of RHAs will extend to "the process" for hiring CEOs and senior officers, a new and profound interference with the autonomy of boards of private organizations;

- The RHAs are effectively authorized to engage in budget line item supervision – i.e. micromanagement of what senior officials are paid;

- A corporation may no longer be able to move funds within its block grant, or draw on additional resources on its own, to make compensation arrangements it considers appropriate to hire or retain leaders in light of the distinctive needs and requirements of each institution;

- The RHAs go beyond being funders and setting objectives and standards to effectively controlling absolutely core aspects of internal governance, including the selection processes for leaders and determining their compensation;

- The leverage that RHAs will have over the selection and compensation of leaders will undermine the ability of private organizations to select leaders who can be counted on to be vigorous and loyal advocates of the organization, rather than pliant to the demands of the regional bureaucracies who can influence their initial hiring, reappointment or salary adjustments;

- The standard service purchase agreements with PCHs provide that "the PCH Health Corporation retains the sole right to appoint, evaluate and terminate its ED/CEO and all staff…"
    - o the SPAs do not provide for government control over the hiring and compensation of the leaders or private corporations.

CONCLUSION

Private health care organizations are part of civil society. They consist of faith-based non-profit organizations, secular non-profit organizations and commercial operations. In addition to accountability to government regulators, they must respond to the needs and requirements of their owners, sponsors, supporters and other stakeholders.

Private institutions have their own distinctive channels of accountability in addition to government. Excessive government interference can impair the ability of organizations to respond to the needs and aspirations of their own constituencies.

The government may be under the misimpression that it can afford to be less respectful of non-profits because their investment is less mobile than that of the commercial sector. The reality is that intrusive and unfair treatment discourages investment of time, energy and financial resources by supporters within the province. Moreover, it presents a serious impediment to attracting much needed investment in health care by national and international organizations. With exigent need everywhere, organizations including specifically non-profit organizations with a choice of where to invest will not be attracted by a province that does not respect the autonomy of the non-profit sector, does not respect its property rights, and does not respect the sanctity of agreements.

We take no position on those aspects of Bill 6 in which the government attempts to streamline and better manage its own bureaucracies.

We strongly oppose, however, Bill 6's attempt to increase the power of those very same bureaucracies at the expense of private corporations. In a democratic and pluralistic society, there must be space for private organizations to use their own resources, and the talent, passion and commitment of their own distinctive leaders, servants and supporters to find distinctive, innovative and effective ways to increase the choice and quality of care available to patients.

There has been no demonstration whatever that this unprecedented and unprincipled attack on private autonomy is justified by any practical need. The government already has many tools to address any particular problems that may arise. We are aware of no incidents which could not be addressed within the existing array of government authority or where a private corporation declined to cooperate with government in addressing real problems. We therefore ask that Bill 6 not be passed in its present form. Instead, we request that it be revised to provide for the regulation and organization of RHAs only and any references to private health corporations be removed.

Manitoba Association of Residential & Community Care Homes for the Elderly (Marche)

Actionmarguerite (St-Boniface)

Actionmarguerite (St-Vital)

Bethania Mennonite PCH Inc.

Calvary Place PCH

Convalescent Home of Winnipeg

Dinsdale Personal Care Home Brandon

Donwood Manor PCH

Dr. Gendreau Home

Fred Douglas Society

Golden Links Lodge

Golden West Centennial Lodge

Holy Family Home

Lions Personal Care Centre

Luther Home

Meadowood Manor

Middlechurch Home of Winnipeg

Park Manor PCH

Pembina Place Mennonite PCH

Rest Haven Group

Sharon Home – Simkin Centre

Salem Home

St. Joseph's Residence Inc.

Ste. Rose Hospital and PCH

St. Paul's Home

Tabor Home

Villa Youville

West Park Manor PCH