



August 5, 2020

Via email: [Minister@cic.gc.ca](mailto:Minister@cic.gc.ca)

The Honourable Marco Mendicino, P.C. M.P.  
Minister of Immigration, Refugees and Citizenship  
365 Laurier Avenue West  
Ottawa, ON K1A 1L1

Dear Minister Mendicino:

**Re: COVID-19 and Changes to the Home Support Worker Pilot**

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to suggest improvements to the Home Support Worker Pilot (HSW Pilot) designed to address the critical shortage of personal support workers in Canada's retirement homes, long-term care facilities, and seniors' private residences.

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

According to the Canadian Institute for Health Information, more than 80% of deaths from COVID-19 in Canada up to late May occurred in retirement homes and long-term care facilities.<sup>1</sup> Staff shortages have been exacerbated by measures in some provinces prohibiting personal support workers from working in multiple facilities.<sup>2</sup> The HSW Pilot can address gaps between the inadequate domestic supply of personal support workers and the acute need to look after seniors and other vulnerable people.<sup>3</sup> We propose modifications to the HSW Pilot so it can fill these gaps quickly before a potential second wave of infections that could be aggravated by the 2020-2021 seasonal flu.

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<sup>1</sup> Canadian Institute for Health Information. [Pandemic Experience in the Long-Term Care Sector: How Does Canada Compare with Other Countries?](#) Ottawa, ON: CIHI; 2020.

<sup>2</sup> Ontario and British Columbia have these restrictions. See e.g.: CBC News, [Ontario to stop caregivers from working at multiple long-term care homes as COVID-19 spreads like 'wildfire'](#), April 14, 2020.

<sup>3</sup> There are no comparable pathways to permanent residence for HSWs hired from outside Canada through any other federal categories or provincial nominee programs (PNPs). In PNPs, ineligibility arises from the absence of a related work experience in the province (e.g., in Alberta and Ontario). In Alberta, the PNP also excludes HSWs from the eligible occupations at the outset.

## Background

### *Shortage of Personal Support Workers*

Longstanding shortages of personal support workers in Canada have been exacerbated by the COVID-19 pandemic. For example, a May 2020 report of the Canadian Armed Forces, which documented conditions in five long-term care facilities in Ontario, identified severe shortages of healthcare staff as a deficiency in the quality of care. The report describes a ratio of 30-40 patients per personal support worker in one home, and incidents of residents being sedated and immobilized because no staff was available to attend to their needs. The Prime Minister and Premier of Ontario decried the findings as “deeply disturbing”, “gut-wrenching”, and “disgusting.”<sup>4</sup> Months earlier, a report by the Ontario Health Coalition detailed problems with recruiting, training and retaining enough personal support workers, which compromised care. The report described many personal support workers leaving the field because they were overworked, underpaid, burned out or injured. Care recipients were deprived of help for basic daily needs, care was rushed, safety and hygiene protocols were not followed, and conflicts arose between neglected patients and overwhelmed staff.<sup>5</sup> This problem is not unique to Ontario. Chronic and worsening shortages of personal support workers were reported across the country long before the pandemic.<sup>6</sup>

### *HSW Pilot*

IRCC launched the Home Child Care Provider and Home Support Worker Pilots in June 2019 as the new federal pathways to permanent residence for caregivers. The HSW Pilot was enabled by the *Ministerial Instructions Respecting the Home Support Worker Class* (MIs). The two-step program is open to foreign nationals already working in Canada and to applicants abroad. Step 1 comprises an assessment of whether the applicant meets the eligibility criteria (except for having completed at least 24 months of qualifying work experience), as well the family’s admissibility. Positive decisions for applicants with less than 24 months of qualifying experience constitute approval in principle (AIP). Principal applicants with AIP receive occupation-specific work permits, open work permits and/or study permits are issued to their accompanying dependants. Step 2 is an evaluation of the principal applicant’s caregiving experience once the 24-month requirement has been satisfied.

IRCC has committed to processing 80% of applications for the two pilots within 12 months for the AIP stage and issuance of occupation-specific work permits, followed by an additional six months for the Step 2 assessment.<sup>7</sup>

### **Proposal to Amend HSW Pilot**

**Recommendation 1:** Expedite processing to effect AIP and issue occupation-specific work permits within 90 days.

With the existing resources at CPC Edmonton and visa offices abroad, the initial assessment and AIP for the HSW Pilot applications can be realistically achieved within 90 days on the receipt of a PR (permanent residence) application. This timeline would improve on the current AIP processing of over

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<sup>4</sup> CBC News, [Ford faces blowback after military report reveals 'horrific' conditions at Ontario long-term care homes](#), May 26, 2020.

<sup>5</sup> Ontario Health Coalition, [Caring in Crisis: Ontario’s Long-Term Care PSW Shortage](#), January 2020.

<sup>6</sup> Canadian Home Care Association, [Home Support Workers: Human Resource Strategies to Meet Chronic Care Needs of Canadians: Final Report](#), June 2011.

<sup>7</sup> IRCC, [Briefing on Immigration Pathways for Caregivers](#), presentation for the CBA Immigration Conference online, June 5, 2020.

12 months.<sup>8</sup> It would also facilitate the issuance of HSW Pilot work permits by late fall 2020, allowing new personal support workers to start working in Canada's retirement homes and long-term care facilities by the winter of 2020-21.

**Recommendation 2:** Waive the requirement for the Educational Credential Assessment (ECA) report to be submitted with the PR application before the AIP stage.

Because of the pandemic, ECA organizations are operating at a reduced capacity, and many schools around the world are not providing requisite documents such as transcripts for the assessment. IRCC can introduce a temporary accommodation for the evaluation of applicants' educational credentials. IRCC officers could substitute the ECA with their own evaluation of the certificates, diplomas and transcripts supplied by applicants, on the understanding that applicants will submit an ECA certificate prior to Step-2 approval of the PR application.

The proposed substituted evaluation can be effected by amending the MIs directly to add "substituted evaluation" as one of the conditions for the education requirement.<sup>9</sup> Alternatively, the requirement to submit the ECA report with the PR application from the outset could be suspended and deferred until after the AIP stage through a temporary public policy pursuant to s. 25.2 of the Act.

**Recommendation 3:** Allow HSW Pilot applicants abroad to give biometrics at the point of arrival in Canada or waive the requirement until after AIP and issuance of occupation-restricted work permits.

Whether they seek an occupation-restricted work permit at AIP or after gaining the necessary 24 months of experience at the second stage of processing, HSW Pilot applicants must provide biometrics. Biometric-collection centres in Canada are closed because of public health restrictions relating to COVID-19. The availability of biometric services outside Canada continues to be limited as many visa application centres are closed or operating at reduced capacity. However, foreign nationals can provide biometrics at ports of entry if they are eligible to apply for work permits on entry into Canada.<sup>10</sup>

An inability to provide biometrics is a barrier for HSW Pilot applicants outside Canada who seek work permits to accumulate qualifying work experience. Without biometrics, work permits normally cannot be issued. Most HSW Pilot applicants are not eligible to apply for work permits on entry into Canada, as they tend to be nationals of visa-required countries.<sup>11</sup> The biometrics requirement can result in months of delays. This impediment can be resolved and the work-permit process finalized by allowing HSW Pilot applicants to provide biometrics as they arrive in Canada following AIP. No regulatory amendments or significant policy changes are required to make this change.

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<sup>8</sup> Many CBA Section members report not yet receiving AIP or Step-1 rejections since HSW and Home Child Care Provider applications were submitted in June 2019 when IRCC launched the Pilots.

<sup>9</sup> MIs require an equivalency assessment for non-Canadian education to be supplied with the PR application initially, before AIP – s. 2(3)(a)(ii)(B). The "equivalency assessment" is defined in the MIs by reference to the corresponding definition in s. 73 of the *Immigration and Refugee Protection Regulations*: "a determination, issued by an organization or institution designated under subsection 75(4), that a foreign diploma, certificate or credential is equivalent to a Canadian educational credential and an assessment, by the organization or institution, of the authenticity of the foreign diploma, certificate or credential".

<sup>10</sup> IRCC, [Where to give your fingerprints and photo \(biometrics\)](#)

<sup>11</sup> Foreign nationals requiring temporary resident visas to enter Canada are not eligible to apply for work permits on entry into Canada, unless they possess a Labour Market Impact Assessment (LMIA) – *IRPR*, s. 198. HSW applicants cannot take advantage of the LMIA exemption since obtaining an LMIA is not required (and not even possible) under the HSW Pilot.

Alternatively, there are other ways to implement this change. HSW Pilot applicants outside Canada can be relieved from the biometric requirement at the AIP stage if they are included in the new *Temporary Public Policy Exempting Essential Workers from Giving Biometrics Overseas*. This policy expressly exempts foreign nationals destined to work in the Canadian healthcare sector<sup>12</sup> which, in our view, includes those working under HSW Pilot-eligible occupations. Another solution is to issue a separate temporary public policy – providing a biometric exemption before final approval of the PR application to HSW Pilot applicants outside Canada who otherwise meet all eligibility criteria to receive AIP and be issued occupation-specific work permits. A further possibility is to exempt HSW Pilot applicants from the biometric requirements at the AIP stage pursuant to the “impossible/not feasible” provision of the *Immigration and Refugee Protection Regulations*.<sup>13</sup>

These suggestions will expedite the AIP process, result in faster issuance of work permits, and enable HSW Pilot applicants to fill critical shortages sooner, regardless of how the pandemic impacts biometric services in Canada and abroad.

**Recommendation 4:** Expand the definition of “eligible occupations” under HSW Pilot.

The MIs require 24 months of work experience in an eligible occupation, which is defined as an occupation under group 4412 of the National Occupational Classification (NOC) and excludes housekeepers.<sup>14</sup> Occupations under NOC 4412 include home support workers, attendant for persons with disabilities, family caregiver, personal aide – home support, personal care attendant – home care, respite worker – home support. Employment can take place “within the client's residence.” Home support workers can be self-employed, employed by private households, or employed by home-care agencies.<sup>15</sup>

The CBA Section believes that home support workers who work in group residences (such as long-term care facilities and retirement homes) should be eligible for the HSW Pilot. However, IRCC appears to take the position that work experience gained in these settings does not qualify under the HSW Pilot. Although this exclusion is not explicitly stated in the online Program Delivery Instructions for the HSW Pilot, IRCC’s Immigration Representatives service wrote to an immigration practitioner in December 2019 that:

Group home settings, including retirement/senior homes, as well as daycares, do not qualify under these pilots; the place of work must be a private residence.[...] The pilots align with the description in the [NOC] codes 4411 and 4412. Work performed in nursing home or senior's home would more closely align with other NOCs and as such do not qualify under this pilot.<sup>16</sup>

Neither the MIs nor NOC 4412 description expressly exclude employment settings that are not private households. The MIs only require performance of the “actions described in the lead statement for the eligible occupation” and “a substantial number of the main duties of that occupation” under NOC

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<sup>12</sup> IRCC, [Temporary public policy exempting essential workers from giving biometrics overseas](#), June 5, 2020.

<sup>13</sup> Section 12.8 provides as follows:

A person who makes a claim, application or request referred to in any of paragraphs 12.1(a) to (m) is not required to provide, with respect to the claim, application or request in question, the information referred to in subparagraph 12.3(b)(i) or (ii), as the case may be, if the collection is impossible or not feasible.

<sup>14</sup> IRCC, [Ministerial Instructions Respecting the Home Support Worker Class](#), “Definitions”, s. 1.

<sup>15</sup> Employment and Social Development Canada, *National Occupational Classification* (2011 edition), “4412 – [Home support workers, housekeepers and related occupations](#)”.

<sup>16</sup> IRCC, Immigration Representatives, e-mail correspondence of Dec. 3, 2019 (printout attached as Appendix A).

4412.<sup>17</sup> The lead statement for NOC 4412 states that care is to be provided “within the client’s residence.” The ordinary meaning of residence is “the place where one actually lives” and “home.”<sup>18</sup> Long-term care facilities and retirement homes are the homes of personal care recipients regardless of the nature of ownership, responsibility for maintenance, or shared or exclusive occupancy. Providing personal care and companionship to residents of long-term care homes and retirement homes should be recognized as part of the duties within NOC 4412, and working in these settings should qualify as eligible experience under the HSW Pilot. We recommend that guidance on eligible work experience in group residences be added to IRCC’s Program Delivery Instructions, operational bulletins, and the Instruction Guide for applicants on IRCC’s website.

Alternatively, if IRCC decides that NOC 4412 excludes group residences, the definition of “eligible occupations” in the MIs should be expanded to include jobs that fall under “NOC 3413 – Nurse aides, orderlies and patient service associates.”<sup>19</sup> This NOC profile contemplates basic care in settings other than private residences such as long-term care facilities. The main duties under both NOC 3413 and NOC 4412 include bathing, assisting with personal hygiene, preparing meals, feeding and helping with feeding, aiding in ambulation, and performing certain healthcare tasks. Adding NOC 3413 to the eligible occupations under the MIs is consistent with the HSW Pilot’s objective to offer a pathway to PR to those who provide personal care to seniors and other vulnerable individuals.

Extending HSW Pilot eligibility to NOC 3413 can be achieved by amending the MIs: modifying the definition of “eligible occupation.” Or, it can be done by issuing a public policy pursuant to s. 25.2 of the Act to exempt HSW Pilot applicants from the “NOC 4412-only” definition of eligible occupations under the MIs if they accumulate 24 months of work experience in a job consistent with NOC 3413.

Given the acute shortage of personal support workers in retirement homes and long-term care facilities across the country, opening a pathway to PR under the HSW Pilot for personal support workers who work in these settings would help the Canadian labour market supply and healthcare industry.

## Conclusion

The HSW Pilot is well positioned to address the critical shortages for personal support workers for elderly and vulnerable Canadians, which have been exacerbated by the pandemic. The work experience of HSW Pilot applicants should be recognized regardless of where the recipients of care are living. Our recommendations would expedite the AIP process, result in faster issuance of work permits, and enable HSW Pilot applicants to alleviate shortages of personal support workers in Canada sooner – in both institutional and private settings.

The CBA Section appreciates the opportunity to comment on the HSW Pilot requirements. We would be pleased to discuss our recommendations, offer additional insights, and assist with the development and implementation of relevant policies and regulatory amendments.

*Yours truly,*

*(original letter signed by Nadia Sayed for Ravi Jain)*

Ravi Jain  
Chair, Immigration Law Section

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<sup>17</sup> MIs, s. 2(5).

<sup>18</sup> [Merriam-Webster Dictionary](#), “Residence”: “the place where one actually lives as distinguished from one’s domicile or a place of temporary sojourn”; “a building used as a home”.

<sup>19</sup> Employment and Social Development Canada, *National Occupational Classification* (2011 edition), “[3413 – Nurse aides, orderlies and patient services](#)”.



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**From:** Immigration Representatives / Représentants immigration (IRCC) <IRCC.ImmigrationRepresentatives-Representantsimmigration.IRCC@cic.gc.ca>

**Sent:** Tuesday, December 3, 2019 10:35:37 AM

**Cc:** Immigration Representatives / Représentants immigration (IRCC) <IRCC.ImmigrationRepresentatives-Representantsimmigration.IRCC@cic.gc.ca>

**Subject:** FW: Home Support Workers - NOC 4412--REP-2019-2328--

Dear [REDACTED],

Please accept our apologies for the delay in responding to your enquiry.

The intent of the Home Child Care Provider and Home Support Worker Pilots is to meet the needs of private individuals and families requiring full-time care in their own home.

Group home settings, including retirement/senior homes, as well as daycares, do not qualify under these pilots; the place of work must be a private residence. This applies even if the caregiver resides with multiple clients requiring care.

The pilots align with the description in the National Occupational Classification (NOC) codes 4411 and 4412. Work performed in nursing home or senior's home would more closely align with other NOCs and as such do not qualify under this pilot.

We trust that this information will be of assistance.

Regards,

The Immigration Representative Mailbox