

# **ONTARIO NURSES' ASSOCIATION**

## **Response to Draft Second Set of Regulations under Bill 140 – *Long-Term Care Homes Act, 2007***

**October 15, 2009**



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## INTRODUCTION

The Ontario Nurses' Association (ONA) is the union representing 54,000 front-line registered nurses and allied health professionals and 10,000 nursing students providing care in hospitals, long-term care facilities, public health, the community, industry and clinics.

ONA has been advocating for quality resident care in the long-term care sector for many years, including participating in the Casa Verde Inquest, and currently has a representative sitting on the Sharkey Implementation Committee.

ONA made detailed submissions to the Ministry of Health and Long-Term Care on June 4, 2009 regarding the initial set of regulations issued under the *Long-Term Care Homes Act, 2007*.

We continue to express our disappointment with the process of releasing the second set of regulations *before* it is known if *any* changes have been made to the initial set of regulations. In addition, the second set of regulations has been released for consultation in advance of the report from the Sharkey Implementation Committee and prior to the release of the Ombudsman's report into long-term care.

We find it particularly problematic that the second set of regulations includes sections related to staffing plans, but will not be able to address any concerns or insights that might be raised in the Sharkey Implementation Committee's final report, which was set up precisely to pilot staffing plans in a sample of long-term care homes. Finally, we are concerned that the compliance process will be based on regulations that have been developed without full information from the Sharkey Implementation Committee report and the report of the Ombudsman.

While our submission will have more to say about specific sections in the second set of regulations – especially staffing plans and 24-hour care by registered nurses (RNs) – we find the lack of staffing and care standards in the regulations to be the most glaring omission of all. Section 17 in the *Long-Term Care Homes Act, 2007* was deliberately amended by the government to allow for staffing and care standards to be provided for in regulations. We now see that this amendment was meaningless and that this government has no intention of living up to its commitment to provide for staffing and care standards in regulations.

Our members working in the long-term care sector find the omission in the regulations of a defined staffing standard for nursing care to be a grave breach of the government's commitment to quality care to the 75,000 residents living in long-term care homes in Ontario.

We are also opposed to any exceptions to the requirement for 24-hour on-site access to care from RNs. This is a priority issue for ONA and for RNs to meet the care needs of residents living in long-term care homes.

## **Part I – DEFINITIONS**

### **“Basic Accommodation”**

We are concerned with the listing of services in the definition of “basic accommodation.” First, we do not understand why services are listed in a definition of “basic accommodation,” which is really about the type of room in a long-term care home and not about the services. Second, the list of services is surely incomplete. The list does not include nursing services or personal care services. Obviously, nursing and personal care are the most important services that residents receive, whether they are housed in “basic accommodation” or in “preferred accommodation.” Third, the definition of “preferred accommodation” does not list any services, but simply defines what is meant by “preferred accommodation,” which is precisely what the definition of “basic accommodation” should define. We recommend deleting all reference to services in the definition of “basic accommodation.”

### **“Registered Nursing Staff”**

We are concerned that the definition of “Registered Nursing Staff” does not clearly exclude management staff, such as Directors of Resident Care. We propose that the definition link back to Sections 8 (3) and (4) in the Act.

### **“Regular Nursing Staff”**

This definition is in clear violation of the intent of Section 8 (3) of the Act. Section 8 (3) is designed to ensure that agency nurses are not used to meet the requirement for 24-hour nursing care. The regulation is attempting to alter the intent of Section 8 (3) to define “regular nursing staff” in such a way as to accommodate agency nursing staff who work at “fixed or prearranged intervals.”

We find this amended definition and other sections related to exceptions to the 24-hour nursing care requirement to change the intent of the Act and will have further to say in later parts of our submission.

## **Part II – RESIDENTS: RIGHTS, CARE AND SERVICES**

### **Doors in a Home**

We are pleased to see that Section 5 (1) (ii) provides for doors to have an access control system. This is not currently the standard in all long-term care homes.

As well, we believe Section 5 (1) (iii) (b) is an important practice to ensure that the cancellation of a call bell can only happen at the point of activation.

### **Nursing and Personal Support Services**

We have a number of major concerns regarding Section 18 in the regulations. Generally, we point out that the regulations tend to exclude important information from the Act. This requires that the regulations be read concurrently with the Act, and this becomes an extremely complicated and fractured undertaking for direct care staff in long-term care homes.

Section 18 (1) (a), for example, fails to indicate that the “organized program of nursing services” as required under Section 8 (1) (a) of the Act is “to meet the assessed needs of the residents.” This is an important oversight because Section 18 (3) (a) changes the language that is used in the Act – using the term “consistent with” rather than “meet” residents’ assessed care needs, and adds “and safety needs.” This creates confusion rather than clarifying the Act, which is the intent of regulations.

As we pointed out in our submission on the initial set of regulations, Section 17 in the *Long-Term Care Homes Act, 2007* specifies that every licensee meet staffing and care standards provided for in the regulations. As currently written, the second set of regulations do not provide for staffing and care standards as recommended in submissions on Bill 140, and in particular, by the Casa Verde Inquest (see recommendations 29 and 37).

In addition, Section 60 (6) in Regulation 832 to the *Nursing Homes Act* provides that a licensee of a nursing home shall ensure that there is a sufficient number of registered nurses, registered practical nurses and health care aides on duty in the home at all times to provide the nursing care required by the residents of the home (O. Reg. 340/96, s. 4). This is a higher standard than provided for in the second set of regulations. A regulated staffing standard for nursing care to meet the assessed needs of residents must be written into the regulations.

Rather than provide for staffing and care standards, Section 18 (3) provides for a “staffing plan.” This is very interesting as the Sharkey Implementation Committee has not yet released the results of the pilots being done in long-term care homes to test the concept of staffing committees and staffing plans. We believe the regulations are premature at best. It should be made clear that Section 18 (3) must meet the requirements of Section 8 (1) (a) in the Act. In addition, Section 18 (3) is silent on the staffing committees and process that are responsible for development of the staffing plans. The staffing committee process requires minutes and documentation of the staffing decisions that are made, including how the decisions were made, whether by majority or by consensus. Section 18 (3) makes no reference to this committee process and makes no reference to an appeals process when there is no agreement by the staffing committee regarding a staffing plan.

In fact, the regulation only says in Section 18 (2) that the licensee shall ensure there is a “written staffing plan.” A “written staffing plan” is not the full staffing committee process undertaken by the Sharkey Implementation Committee. ONA does not support the language in the current regulations regarding staffing plans without the addition of the staffing committee and process related to appeals and minutes.

We do not know what is meant in Section 18 (3) (b) by the term “organization and scheduling of staff shifts.” We believe the terms should specify the methodology used and the staffing complement for each shift that will “meet the assessed needs of residents.”

We point out that the requirement in Section 18 (3) (c) for staffing that promotes continuity of resident care by minimizing the number of different staff providing nursing and personal support services to residents is an absolute contradiction to the requirements in Section 32 of the regulations that permits the usage of agency nursing staffing in smaller long-term care homes.

We support the intent of Section 18 (3) and efforts that promote continuity of resident care, which is why we are opposed to promoting the use of agency nursing staff in Section 32.

Section 18 (3) (d) does not indicate any specific frequency for evaluation of staffing plan changes, but leaves it vague without any standard. As well, the language used is to “improve the plan” rather than to meet the assessed needs of the resident. Again, this changes the intent of the Act. The staffing plan must be evaluated as necessary to meet the assessed needs of the residents, but must be evaluated at least quarterly.

The evaluation of the staffing plan must be linked to the residents’ assessed needs and to the care plan. The staffing committee must be involved in the evaluation of the staffing plan.

Section 18 (4) must also state any changes recommended by the Staffing Planning Committee that were **not** implemented, and the rationale for not implementing the changes, must be included in the evaluation of the staffing plan.

Finally, we note that there are many references in the regulations regarding specific staffing formulas and minimum hours for other classifications, for example, the Nutrition Manager. Yet, there are no staffing standards for nursing and personal care direct staff who deliver the primary care to the residents. This glaring exclusion **must** be corrected if residents are to receive the care they need to meet their assessed needs.

### **Foot Care**

It is our view that Section 22 does not provide a standard for foot care. A definition of what basic foot care must be provided is required to ensure standards for compliance and enforcement.

### **Transferring and Positioning Techniques**

Section 23 will not be possible without sufficient staffing levels. In addition, the section must also say that safe techniques include that all lift equipment be maintained in good working order. This standard of being maintained in good working order should also apply to Section 25 regarding mobility devices.

### **Availability of Supplies**

Section 31 specifies that supplies, equipment and devices are readily available, but must also specify a requirement to ensure that the equipment and devices are maintained in good working order.

### **24-Hour Nursing Care – Exceptions**

Access to 24-hour care from a RN is a fundamental and priority issue for ONA to ensure quality resident care. ONA does not support any exceptions to the requirement for 24-hour RN care, regardless of the size of the home. Our position is that there are no exceptions for non-defined emergencies or exceptional and unforeseen circumstances. We want to be very clear on this matter.

Our expectation is that the government will provide assistance to long-term care homes with RN recruitment efforts, not promote the use of for-profit nursing staffing agencies that do not provide continuity of resident care and that will increase costs to the long-term care sector. We also do not support replacement of RN care.

ONA has successfully limited the usage of agency nurses in the hospital sector, and we intend to take action to limit agency usage in long-term care homes. It is our understanding that the government is also interested in limiting the use of agency nurses for the very same reasons – continuity of care, quality and safety of resident care, and cost-effectiveness.

We have also written to the Minister of Health and Long-Term Care on September 24, 2009 regarding the absolutely unacceptable practice of nursing home chains, such as Leisureworld, which regularly rely on agency nurses from a staffing agency that they own and operate. There are no efforts given to recruiting RNs when the home can make a profit using staffing from their own agency. It also violates policy that licensees should not be making a profit from the nursing and personal care funding envelope.

Section 32 also ignores the requirement in Section 8 (4) of the Act regarding the prohibition on the use of an Administrator or Director of Nursing and Personal Care to meet the 24-hour standard for RN care. Using the regulations to change the intent of the Act is deceitful to the residents living in long-term care homes, their families, and the RN staff who deliver their care.

For similar reasons, we are also opposed to any exceptions that allow for staff other than RNs to provide 24-hour RN care, given the ever-increasing acuity of our residents.

### **Qualifications of Personal Support Workers (PSWs)**

ONA does not support Section 34 without a provision that grandparents employees currently working in the role as of the date of proclamation. We also oppose Section 34 (3) (a), as it violates current College of Nurses' standards of practice. An RN or RPN are held to the higher standard of their practice, even if they are working as PSWs. This section will also sanction a practice of employers paying lower wages for staff with higher qualifications, and we are asking that it be eliminated.

### **Restorative Care**

In our view, restorative nursing care, as mandated in Section 36, to be integrated into **all** care plans to maintain and improve is overly idealistic given the current staffing levels. With an older population, and indeed a more frail population, appropriate staffing levels need to be in place to execute this requirement. Current staffing levels do not permit staff to allow the time for many tasks to be done by residents.

The point is that it takes extra time and requires better staffing levels to promote independence. The regulations do not address appropriate staffing levels to ensure restorative care is possible.

### **Therapy Services**

Section 37 (a) should be amended to match the language used in other sections and in the Act. Replace "based on" with "to meet" residents' assessed care needs.

In addition, Section 38 (b) must include that all therapy equipment be maintained in good working order.

### **Social Work and Social Services Work**

Section 40 should be amended to be consistent with other sections and with the Act. Add to meet the residents' "assessed" needs.

### **Recreational and Social Activities**

We are please that Section 43 provides for programs to be offered during evenings and weekends as well as during days. This change is long overdue.

### **Dietary Service Program**

We do not see any reference to culturally appropriate food choices in the regulations.

### **Medical Services**

Section 58 concerns the availability of medical services to the residents in the home 24 hours a day. However, the regulation does not provide for assessments by medical staff as necessary. In other words, the regulation does not provide that medical staff be available to come into the home to conduct assessments of residents.

For example, a resident has a sudden change in behaviour and the nursing staff contacts available medical staff, who in turn order a **sedative** without assessing the change in behaviour. There is no requirement for the medical staff to assess the resident in terms of reasons for the sudden change in behaviour.

There could be many reasons related to falls or other conditions that precipitated the sudden change in resident behaviour, but ordering medications by phone is not “access to medical services in the home 24 hours a day.”

Similarly, Section 59 (c) should indicate that after-hours coverage and on-call coverage include coming into the home as necessary to assess residents. Finally, Section 60 (c) (iii) should also provide that after-hours coverage and on-call coverage include coming into the home to assess residents as necessary.

In Section 59 (a), there should be a specific timeframe noted for when the physical examination is provided for each resident “upon admission.” Section 59 (b) should be amended to be consistent with other regulations and the Act to provide that physicians and/or nurse practitioners attend as necessary to meet the assessed needs of the residents. Attending “regularly” may not be sufficient to meet residents’ assessed needs in their care plan.

Section 61 must specifically state that there must be medical directives in place so that nurse practitioners are able to perform their job as efficiently as possible without delay to obtain the appropriate medical directive, and to ensure that their practice is consistent with the *Regulated Health Professions Act*.

### **Specialized Units**

We believe a definition of specialized units should be provided in regulation, as Section 39 (3) does not provide such a definition.

We also believe that the CCAC should be involved in the recommendation under Section 101 (2), as the CCAC is responsible for the placement process into long-term care homes, while the LHIN is responsible for funding. Similarly, the assessment under Section 101 (3) that is part of the recommendation would come from the CCAC, not the LHIN.

### **Training**

In our view, it is essential that Section 114 (Training), Section 116 (Orientation), Section 117 (Retraining) and Section 118 (Additional Training) provide that it is a mandatory requirement to ensure backfilling practices to replace staff when they attend training and orientation. We are also assuming that when a home uses agency direct care staff, they are responsible for meeting the requirements of these sections.

The requirement under Section 118 (2) for training of direct care staff on an annual basis is insufficient to meet residents' assessed care needs. The requirement should be as necessary to meet residents' assessed care needs, but at least annually.

We assume that Section 118 means that orientation for direct care staff does not qualify as training under the requirements of this section. This must be clarified.

Section 118 (3) must provide that sufficient time and staffing levels are in place to "provide support and assistance to residents to promote independence." Section 118 should also include specialized training in infection control practices and protocols.

We believe the exemptions under Section 118 (5) are inappropriate and that physicians and nurse practitioners should be expected to keep current on specific programs and policies within the home and to meet regular requirements for professional development. In particular, they should be included in ongoing training related to infection control practices and violence initiatives.

### **Posting of Information**

The requirements under Section 121 for posting of information in the home must include that the information is easy to access, easy to read and available in other languages as necessary. Written staffing plans and related staffing committee minutes of decisions related to staffing plans and the evaluation of staffing plans should be posted.

### **Emergency Plans**

Section 124 (4) must add pandemic planning to be included in emergency plans in each home.

In addition, monitoring loss of cooling in heat waves and power outages should be included in emergency plans. Staffing requirements and protocols should be addressed in emergency plans.

### **Personnel Records of Current Staff**

We do not understand the rationale for Section 133 (2) requiring that the personnel record for staff working at more than one site of the same licensee or chain be maintained at all homes where the staff member works. It could just be phrasing, but it seems to us that there is no justification for this requirement. Each home would maintain personnel records at the home that the staff member works. What is the rationale for this requirement at multiple homes in the same chain? This rationale needs to be made clear or the section should be eliminated.

### **Criminal Reference Checks**

We believe that Section 137 should be amended to apply to agency nursing staff, physicians and nurse practitioners who may not meet the definition of staff member. This section should also clarify that the licensee is responsible for any payment associated with a mandated criminal reference check.

The Ministry of Health should supply a standard declaration form to meet the requirements under Section 137 (4). Note that nurses registered with the College of Nurses already provide a declaration as part of their annual registration process.

### **Medication Management – Quarterly Evaluation**

We do not understand how an interdisciplinary team could be formed to evaluate medication management in the home under Section 141, but exclude the RN who is responsible for assessments and medication each and every shift.

We assume this is an oversight and will be corrected. In addition, the College of Nurses' standards of practice provide that the RN is a lead in any interdisciplinary team. These quarterly evaluations should be treated as learning opportunities for all involved.

Section 141 should mandate that the Ministry of Health and Family/Resident Councils receive copies of the quarterly evaluations, including the changes that were implemented by the licensee.

### **Medical Directives and Orders**

Section 143 provides for medical orders and directives regarding medications to be reviewed when a resident is assessed or reassessed, but fails to cover any other medical orders and directives, e.g. the use of restraints. This section should be amended to cover any and all medical orders and directives.

### **Restraining by Administration of Drug**

We are concerned about the ramifications of Section 163. In our view, this could lead to conflict with a nurse's duty to the College of Nurses' standard regarding the use of restraints. The College standard is one of least restraint. We are asking for Section 163 to be amended in accordance with the standards of practice of the College of Nurses.

### **Non-Arm's Length Transactions**

We are requesting that Section 166 be amended to clearly prohibit licensees who also own nursing agencies from hiring nursing staff from their own agency to staff the nursing homes that they also own. This is clearly a conflict of interest, it is contrary to Ministry policy, and ONA has written to the Minister of Health and Long-Term Care regarding putting an end to this practice.

### **Compliance and Enforcement**

We are requesting an amendment to Section 212 so that direct care staff be required to provide input to the inspector about rectifying any finding of non-compliance before any actions or orders are undertaken.

### **Protection of Privacy in Reports**

Section 214 should be amended to provide that staff be informed of all inspectors' orders, reports and findings of non-compliance.

### **CONCLUDING REMARKS**

Our submission provides a number of recommendations for additional improvements to the second set of regulations. We sincerely hope that these recommendations will be given serious consideration by Health Ministry staff and the new Minister of Health and Long-Term Care.

In the interests of transparency, we also recommend that the results of the Health Ministry staff evaluation of recommendations received from the consultation on the initial and second sets of regulations be made public.

We are extremely concerned that the regulations do not provide for regulated staffing levels that allow a standard of care to meet residents' assessed care needs. We are also opposed to any exceptions to the requirement for 24-hour on-site access to care from registered nurses. Our residents depend on our care.

We strongly advise the Health Ministry and the Health Minister to reconsider staffing and care standards in the regulations, as contemplated in Section 17 of the Act, and to rethink any exceptions to 24-hour on-site RN care. Minimum standards for direct care staff and for resident care, including 24-hour on-site RN care, are paramount to ensure resident well-being and safety. This fundamental flaw must be corrected in the regulations if residents are to receive the care to meet their assessed needs.