



June 20, 2011

Ms. Janet Filipovich
Retirement Homes Project
Ontario Seniors' Secretariat
777 Bay Street, 6th floor
Toronto ON M7A 2J4

Dear Ms. Filipovich,

Re: ONA Submission on Phase Two of Proposed Initial Draft Regulations – *Retirement Homes Act, 2010*

The Ontario Nurses' Association (ONA) is the union representing 57,000 front-line registered nurses and allied health professionals and more than 12,000 nursing student affiliates providing care in Ontario hospitals, long-term care facilities, public health, the community and industry.

ONA has responded to phase one of the proposed initial draft regulations under the *Retirement Homes Act, 2010*. We do want to stress that the proposed regulations should be released as an entire package rather than in the current fragmented approach. This also was an issue with the regulations released under the *Long-Term Care Homes Act*.

Our submission will make comments in two areas:

1. The issue of appropriate and sufficient employer liability insurance for regulated staff.
2. The amount and structure of administrative penalties.

Appropriate and Sufficient Employer Liability Insurance for Regulated Staff

Phase two proposes to amend Ontario Regulation 166/11 by adding Section 5.1 related to extra expense insurance. The amendment would require operators of retirement homes to have insurance policies that include payment for additional costs for accommodation and care of residents in the case of loss or damage to the retirement home. While we agree with this requirement, it raises a further issue of insurance coverage for us that we do not believe is noted in the regulations to date.

There is a requirement under the *Regulated Health Professions Act* that regulated staff have liability insurance coverage. In other sectors, such as the hospital sector and the long-term care sector, regulated staff are included under their employer's liability insurance coverage to meet the professional regulation standards such as those set by the College of Nurses of Ontario.

We raise this issue here as we do not see any reference in the Act or existing regulations to any requirement for operators of retirement homes to ensure they have appropriate and sufficient insurance coverage for liability of regulated staff, before they offer care services and employ regulated nursing staff.

The Amount and Structure of Administrative Penalties

Phase two of the initial proposed regulation amends Regulation 166/11 to provide that the Registrar shall determine the amount of an administrative penalty for a contravention of the Act in accordance with Section 93 of the Act. Phase two also proposes that the Registrar determines whether the contravention of the Act had a major, moderate or minor adverse effect on residents or other persons.

First, there is no definition proposed for a major, moderate or minor adverse effect. It is difficult to envisage how the Registrar will be able to determine if an adverse effect is major, moderate or minor without some form of legislative guidance in terms of guidelines and definition for what constitutes a major, moderate or minor adverse effect, especially when it involves a resident of the home. A definition for these categories is essential.

Second, we believe the administrative penalties set out are far too lenient to encourage compliance with the requirements of the Act, which is the intended legislative purpose of the administrative penalties.

We understand that Section 93(3) in the Act sets out a maximum administrative penalty of \$10,000, but believe this maximum is insufficient to change the behaviour and to encourage compliance of large, for-profit companies who own retirement homes.

In addition, we believe the structure and range of administrative penalties requires amendment, as it is currently proposed to have substantial overlap in the penalties between the three levels of severity of adverse effect. It seems much more intuitive to have the maximum of a lower severity equate to the minimum of the next level of severity. Otherwise, why would the offence be classified in a *higher* level of *severity* of adverse effect with a *lower* penalty?

We propose the following readjustment of administrative penalties:

- major - \$5,000 to \$10,000
- moderate - \$2,500 to \$5,000
- minor - up to \$2,500.

We believe this readjustment of the penalties will provide a better incentive to encourage compliance with the Act, especially in instances of moderate and major adverse effects.

Thank you for consideration of our recommendations.

Sincerely,

ONTARIO NURSES' ASSOCIATION



Linda Haslam-Stroud, RN
President

lhs/lw

C. Lesley Bell, RN, Chief Executive Officer, ONA