

# ONTARIO NURSES' ASSOCIATION

## Submission on Proposed Initial Draft Regulations – *Retirement Homes Act, 2010*

Retirement Homes Consultation, Retirement Homes Project  
Ontario Seniors' Secretariat

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## **INTRODUCTION**

The Ontario Nurses' Association (ONA) is the union representing 55,000 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 including retirement homes, public health, the community and industry.

We welcome the opportunity to provide our frontline nursing perspective on the proposed initial draft regulations for retirement homes in Ontario.

In our submission on the retirement homes bill, we indicated that ONA supports government regulation of retirement homes, not self-regulation by the retirement homes industry, if vulnerable seniors living in retirement homes are to live in dignity and to feel protected in their homes.

Now that the proposed regulations have been released, we continue to believe that the clear and obvious distinction between the regulated care provided in long-term care homes and the type of regulated care that should be provided in retirement homes has not been sufficiently defined. The regulations must contain safeguards to ensure that retirement homes do not become a lesser private-payment alternative to publicly funded long-term care homes, must provide clear limits on the regulated care that can be provided in retirement homes, and must clearly outline how any publicly funded interim long-term care beds are to be used within retirement homes. Retirement homes must not be regulated in such a manner that they become a substitute for any shortage of long-term care beds in Ontario.

We believe that there are two fundamental principles that should guide the regulation of retirement homes in Ontario. The first principle involves government oversight over the regulatory regime and government involvement in the inspection and enforcement of the retirement home industry. The second principle involves specifying limitations on the appropriate level of regulated care to be provided in retirement homes.

Our review of the proposed initial draft regulations will be done with these principles in mind.

## **ONA RECOMMENDATIONS**

### **1. Regulations still to be issued for notable areas in the legislation**

We understand that future phases of regulations will be posted in the coming months, but notable areas of the legislation are not contained in the proposed initial draft regulations. Key areas for regulation, in particular, are the role and accountability of the Retirement Homes Regulatory Authority (sections 10 to 32 in the legislation), the role and accountability of the Registrar (section 76 and forward), and whistleblower protection (sections 115 and 116).

In addition, the regulation of long-term care beds under the *Long Term Care Homes Act*, when such beds are provided in retirement homes, is missing from the proposed initial draft regulations. We believe this requirement must be clearly spelled out in the regulations for retirement homes.

Section 50 in the regulations indicates that a licensee is to provide the Registrar with quarterly documentation relating to information provided to residents about alternatives to living in a retirement home, if the assessment indicates the resident may be eligible for admission to a long-term care home or if the resident's care needs cannot be met at the home. The section raises the issue of the fine line between the care that may be provided in a retirement home and the care that should be provided in a long-term care home. It appears a licensee will make this determination. We find this problematic. It is also not clear what the Registrar will do with the quarterly documentation. This should be specified in the regulations.

### **2. Number of occupants in the definition of retirement home**

The regulations specify that the prescribed number of occupants is at least six for the definition of retirement home in the legislation. We believe the number of occupants should be reduced to at least four to ensure that small retirement homes are regulated. We appreciate that the number of occupants is somewhat arbitrary but we believe using at least four will ensure broader regulation.

### **3. Disclosure of information on applicants for license to operate a retirement home**

Section 5(3)(b) does not provide for a requirement for applicants of a police background check or disclosure of past bankruptcies. A police background check is a requirement for staff and volunteers. In addition, we believe section 5(2) should provide for disclosure of the name and address of the person who holds ownership of the land on which the retirement home is located and who holds any mortgage for the retirement home.

### **4. Timeframe for providing copies of agreements to residents**

Section 8 specifies that residents will receive copies of their plan of care and written agreements for care services as soon as possible after the agreement is made or plan is developed.

It is our view that a timeframe should be specified to ensure these important documents are provided at the time when they are developed or made.

### **5. Analysis of abuse and neglect under a policy of zero tolerance**

Section 15(1)(g) in the regulations provides that the licensee undertakes “an analysis of every incident of abuse or neglect.” However, the regulations do not specify what is to be done with this analysis of the incident, except that the licensee is to consider the results of the analysis in the annual evaluation of their policy of zero tolerance of abuse and neglect. We recommend that this analysis also be copied to the Registrar so that incidents might be monitored in each retirement home and compared against benchmarks/best practices achieved in the retirement home sector.

### **6. Standards for Retirement Homes**

We do not believe that “timely action” to deal with “extreme temperature changes” in section 16 is a sufficient standard to regulate temperatures in retirement homes. We recommend that there also be a defined range of appropriate seasonal temperatures, a definition for extreme temperature changes, and a timeframe for timely action.

We recommend adding “supplies” to section 17 to ensure that common bathrooms not only have sufficient linens but also other necessary supplies such as soap and tissues.

The standard for pest control in section 18 is also “timely action.” Again, a timeframe must be defined for timely action and it should be specified what approved pest control is to be undertaken.

The standard for “adequate training” for all staff involved in preparing food must be specified in section 20. It appears in subsection 20(4) that the standard is at least one person must hold a current certificate in food handling from the local public health unit. We believe this minimum requirement should be extended to all staff involved in food preparation.

Under section 22, we believe the documentation of falls in the home should also be copied to the Registrar so that falls might be monitored in each retirement home and compared against benchmarks/best practices achieved in the retirement home sector.

Finally, there do not appear to be any other standards relating to the building environment or for mandatory sprinklers in the building.

## **7. Administration of drugs**

Section 30 appears to say that a licensee or other staff member may administer a drug or other substance if they have received training in the procedures, and a member of a College defined in the *Regulated Health Professions Act* supervises the administration of the drug or other substance.

This standard raises a number of issues for us. First, it is not clear that a nurse must be present to supervise the administration of a drug or other substance as it may be a member of any College. Second, it is not specified if the supervision is to be physically in the retirement home as there is no requirement specified for 24/7 supervision of medication administration by an RN or RPN. These are glaring flaws that must be corrected for safe medication administration and management (see sections 31 to 34) in line with standards of practice for regulated professionals.

## **8. Continence care**

The requirement in section 37(2)(b) for an annual evaluation of incontinence products and consultation with the resident and staff is insufficient and untimely for effective care. Continence needs change with weight fluctuations and must be addressed on a regular basis to ensure resident dignity.

## **9. Assessment of care needs**

The regulations do not specify who conducts the initial assessment of residents noted in section 44, who conducts the full assessment of residents noted in section 45, and who develops the plan of care noted in section 48. It appears, based on exceptions listed in sections 46 and 47, that the licensee, a staff member or a member of a College as defined in the *Regulated Health Professions Act*, may conduct the initial assessment and the full assessment.

Who might develop the plan of care is not specified, but section 49 specifies that the plan of care must be “approved” by a physician or a nurse or a person acting under the supervision of a physician or a nurse. Exceptions are listed in section 49(2) for when a plan of care must be approved solely by a physician or a nurse. What is not clear in the regulation is whether the approval process for reviewing a plan of care also includes an assessment of the resident.

## **10. Personal assistance services devices and restraints**

We believe that it is imperative under section 52(1)(b) to spell out the “common law duty” for use of restraints, given the number of untrained and unregulated staff working in the retirement homes sector.

In addition, we believe the requirement for reassessment of restrained residents by physicians or nurses every 15 minutes as provided for in section 53(2)(b) is highly unlikely to happen in practice given the provider population in the retirement homes sector. For example, there is usually only a RPN or RN on days, if any.

## **11. Procedure for complaints**

The regulations do not specify at what point the Registrar must be notified of a complaint or notified of an unresolved complaint. Further, it is not clear what recourse a resident has or what steps may be undertaken if a resident believes their complaint is unresolved under section 58. It is also not clear how complaints being dealt with by the licensee under section 58 of the regulations intersect with complaints received by and dealt with by the Registrar under section 83(1) of the legislation, in which case the Registrar shall ensure an inspector visits the home immediately under section 59 of the regulations.

Section 58 in the regulations specifies that in the case where complaints are unresolved within 10 business days that a date for resolution will be provided to the resident (without any specified timeframe for actually resolving the complaint), but nothing is mentioned in the case where a complaint remains unresolved.

## **CONCLUSION**

We sincerely request that our recommendations be given serious consideration so that residents in retirement homes will receive the appropriate level of care they deserve to live safely and with dignity.