

Regulatory statute to oversee elder care facilities

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For Law Times

Acknowledging that there is a significant aging demographic in the province, the Ontario government passed legislation earlier this year that provides a comprehensive regulatory system for retirement homes.

Under the Retirement Homes Act, all retirement homes in the province will be subject to government regulation designed to protect the rights, safety, and care of residents.

"I think what we're seeing is just the tip of the iceberg in terms of legal changes and new laws that acknowledge that the baby boom generation is aging," says Daniel Fabiano, an associate at Fasken Martineau DuMoulin LLP whose corporate commercial practice includes public-sector health care.

He says the legislation is significant because it grants a broad range of regulatory powers to the government for the first time.

The legislation creates a Retirement Homes Regulatory Authority that will be managed by a board of directors and include a registrar, complaints review officer, and risk officer who will administer and enforce the act.

As a result, the bill will create a new focus for lawyers who practise health law because the scope of the standards will require them to review the corporate structure of all retirement home clients.

Within the bill, Fabiano cites three significant areas that lawyers will have to be aware of.

First, the licensing requirement enables the province to ensure an applicant

facility's leadership meets criteria related to its character, competence, and financial capacity.

The second significant criteria enables the province to send an inspector to the proposed location to ascertain whether the facility meets the care standards set out in the legislation.

Third, the legislation takes into account the rights of residents in order to protect their dignity with respect to care services including feeding, bathing, dressing, and personal hygiene.

The new regulatory regime empowers the province to inspect all retirement facilities on a regular basis. As a result, lawyers will increasingly be retained to assist qualified facilities with their legal obligations, says Fabiano.

"This will significantly impact how retirement homes are run, and so it will require lawyers to be on hand and to advise in each step of the process," he says.

"Lawyers will have to be involved from both a business perspective and an administrative perspective" to assist retirement home clients with all means of compliance, he adds.

In an article for the Ontario Bar Association's health law section newsletter in June, Torkin Manes LLP's Lisa Corrente points out that a retirement home "is defined as a residential complex, or part of a residential complex, (i) that is occupied primarily by residents who are at least 65 years old; (ii) that is occupied or intended to be occupied by a prescribed number of residents who are not related to the operator; and (iii) where the operator makes at least two care services, directly or indirectly, available to residents."

In further explaining the language of



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the legislation, she notes that care services "include such services as assistance with feeding, bathing, dressing, personal hygiene and ambulation, continence care, the administration of a drug, a health care service provided by a regulated health professional, or the provision of a meal."

She notes that facilities such as long-term care homes, homes for special care, and hospitals are expressly excluded from the definition of a retirement home and will therefore not be governed by the new legislation.

But for those facilities that require licences under the new legislation, there

are ongoing compliance requirements they will have to meet related to residents' rights, care, and safety. The registrar will be required to promptly review any complaints with the authority to inspect the property and investigate any allegations of improper care, unlawful conduct, abuse or neglect.

Existing homes will be grandfathered into the legislation, meaning lawyers will be called upon to assist clients with all means of compliance.

Tracey Tremayne-Lloyd, a partner and health law practitioner at Gardiner Roberts LLP, says the legislation could also require families to seek legal advice to ensure the best care for aging family members.

She points out that the legislation enables families to make decisions on behalf of their elderly relatives if there has been a breach in protocol by an institution that's providing care.

"If lawyers are approached by family to move their elderly parents and don't know which way to turn, lawyers will need to be aware of the fact that they can apply for this change category and make an application to help families find ways to help their elderly family members," she says. "This new legislation will provide much more control in the best interest of the elderly and their families."

Besides the retirement home bill, there have been changes proposed to Ontario's privacy legislation that will affect the way lawyers advise hospitals. Following Ontario's eHealth scandal, the premier has promised to make health care in the province more transparent to enable the public to scrutinize hospital operations as well.