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The Retirement Homes Act, 2010

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The reticence of past governments to enact a comprehensive regulatory regime for retirement homes, for fear that it would create an equally comprehensive requirement for provincial funding, appears to have been abandoned by the current provincial government. The newly enacted *Retirement Homes Act, 2010* (the "Act") provides, for the first time, specific legislative rights for seniors living in retirement homes in Ontario. The main goals of the Act are to:

- create a regulatory authority with the power to license and conduct regular inspections and investigations of homes and enforce the Act;
- establish mandatory care and safety standards; and
- establish residents' rights.^[1]

This bulletin will focus on four of the 10 parts of the Act: Retirement Homes Regulatory Authority; License to Operate a Retirement Home; Residents' Rights, Care and Safety; and Enforcement.

Although the Act received Royal Assent on June 8, 2010, only the parts of the Act that establishes its fundamental principle and creates the Retirement Homes Regulatory Authority (the "Authority") are currently in force. The remainder of the Act will come into force on a day to be named by proclamation of the Lieutenant Governor.^[2]

Fundamental Principle

The fundamental principle of the Act, which applies to the interpretation of the statute and its regulations, is to ensure that a retirement home is "operated so that it is a place where residents live with dignity, respect, privacy and autonomy, in security, safety and comfort and can make informed choices about their care options."^[3]

Retirement Homes Regulatory Authority

The Authority is established by the Act as a corporation without share capital. The Authority has the capacity and powers of a natural person, except as limited by the Act.^[4] Its objects are administrative, advisory and educational; specifically to: 1) administer the Act and its regulations; 2) educate licensees, consumers and the public on matters relating to the Act and its regulations; 3) provide information about retirement homes; 4) advise the Minister on policy matters relating to retirement homes; and, 5) carry out the duties or powers assigned to it under any Act or by the Minister.^[5] The Minister may give policy directions to the Authority in its administration of the Act and its regulations, provided that the Minister considers it in the public interest to do so.^[6] The Authority is required to comply with any such direction.^[7]

Along with appointing a Registrar^[8] and a Complaints Review Officer,^[9] the Authority is required to appoint a Risk Officer, whose main duties and powers are to review and assess the effectiveness of the Authority's administration.^[10] The Risk Officer must prepare and deliver to the Authority and the Minister an annual report about the Authority's activities, along with other reports that the Authority or the Minister requests or that the Risk Officer considers to be in the public interest.^[11] Any report other than the annual report^[12] must be available for public inspection within one year after it is received by the Authority or by the Minister.^[13]

The Authority is permitted to charge a fee in relation to anything it does in administering the Act and the regulations, so long as the Minister has approved the method of determining the amount.^[14] The Act also establishes the Retirement Homes Regulatory Authority Emergency Fund (the "Fund"). The Authority must make payments into the Fund and administer and make payment out of the Fund, all in accordance with any regulations that may be enacted.^[15] Depending on how the regulations to the Act are drafted, the Fund could be used to pay claims of residents under the Act. Within three months after the end of its financial year, the Authority must give the Minister an annual

report about its activities and financial affairs,^[16] which presumably will include those pertaining to the Fund.^[17] The Minister must make the report available to the public no later than three months after he or she receives it.^[18]

The Act explicitly protects the Authority and its employees against actions or other proceedings for "any act done in good faith in the execution or intended execution of any duty imposed or power conferred by this Act or the Regulations, or for any alleged omission in the execution in good faith of that duty or power."^[19] The Authority and its employees, members, directors and officers are not agents of the Crown.^[20] The Minister has the power to appoint a supervisor (called an Administrator) to assume the powers of the Authority.

The remainder of this bulletin discusses those parts of the Act that are not yet in force.

License to Operate a Retirement Home

In order to operate a retirement home, a person needs hold a licence specific to that home.^[21] Along with providing all other documents and information required by the Act and the regulations, in order to be issued a licence, the applicant must demonstrate, having regard to its past conduct,^[22] that it is competent to operate the home in a responsible manner, and is able to provide or facilitate the provision of care services to its residents. The criterion applies not just to the applicant, but also to those with a controlling interest in the applicant, and its directors and officers, if any.

In order to determine whether the applicant has met the required criterion, the Registrar may:^[23]

- make inquiries and conduct investigations into the character, financial history and competence of any of the persons described above;
- require any person who is the subject of an inquiry/investigation to provide any relevant material or information;
- request any relevant documents or information from anyone it believes can provide it;
- require that any material or information provided be verified by statutory declaration or otherwise; and
- cause an inspector to conduct an inspection of the retirement home and any place that is operated in connection with the home and from which services are provided to the home.

The costs associated with the inquiries, investigations and inspections are to be paid by the applicant.^[24]

Before the Register makes a decision to refuse to issue a license to an applicant or to impose a condition on a licensee's licence, the Registrar must first:^[25]

- notify the applicant or licensee of its intention and the reasons;^[26]
- provide the applicant or licensee an opportunity to make written submissions; and
- review the written submissions made by the applicant or licensee.

If the Registrar refuses to issue a license or imposes a condition on the licence, the Registrar must set out the reasons therefor and the requirements to be met if the licensee or applicant wishes to appeal the decision to the Licence Appeal Tribunal.^[27] If a licence is refused, a reapplication for a licence is permitted if the person satisfies the Registrar that new or other evidence is available or that material circumstances have changed.^[28] The same regime applies for an application for removal of a condition on a licence.^[29]

Before a person ceases or acquires a controlling interest in the licensee, or any other event that would result in the termination of the licence, the licensee must provide a minimum of two months prior written notice to the Registrar.^[30] Other events, such as a change in the directors or officers of the licensee, require a written notice to be given as soon as possible.^[31]

The Act also prohibits the transfer of any interest in a licence. A transfer could occur upon the exercise of a security interest in a licence or in the property of a licensee that includes a licence, unless written notice is given to the Registrar by the person exercising the interest as contemplated in the Act.^[32]

In order to cease operating a retirement home, the licensee must give the Registrar a transition plan within the prescribed time period. The licensee must also deliver a written notice to each resident (and to his/her substitute decision-maker, if any). If a resident requests, a licensee must take reasonable steps to find appropriate alternate accommodation for the resident or to facilitate the resident's access to any external care providers. The licence is deemed to be surrendered on the date the home ceases to be operated as a retirement home.

Residents' Rights, Care and Safety

The Act sets out a Residents' Bill of Rights. These rights, 10 in all, include the following three: the right to know what care services are provided in the home and how much they cost; the right to have the choice of care services provided by staff who are suitably qualified and trained; and, the right to live in a safe and clean environment and to be treated with courtesy, respect and in a way that fully recognizes the resident's individuality and respects the resident's dignity.

The licensee of a retirement home shall enter into a written agreement with every resident of the home and provide a package of information to the resident (and his/her substitute decision-maker, if any) before the resident commences residency in the home.^[33] The licensee must revise the package of information as necessary to ensure that it is accurate and make it easily accessible in the home.^[34] The Act sets out 23 types of information that are to be included in the package of information. Additional material must be made available and/or posted in the home.

The Act allows the residents of the home to establish a Residents' Council and grants the Residents' Council various powers, which are generally of a reporting or advisory nature.^[35] The licensee must respond to the Residents' Council in writing if it has received any concerns or recommendations relating to the operation of the home, improvement of care or the quality of life in the home.^[36] If a Residents' Council is established, the licensee must appoint a Residents' Council assistant who is acceptable to the council.^[37] The licensee must also consult with the Residents' Council at least every three months.^[38] Neither the licensee nor the staff of the home can attend meetings, unless the Residents' Council invites them.^[39] A licensee cannot interfere with the meetings or operation of the Residents' Council.^[40]

Care and Safety

In addition to providing for residents' rights, the Act requires that all safety standards (prescribed within the Act or its regulations) must be adhered to, including those relating to fire, safety and public health requirements and emergency evacuation plans. Every licensee must also ensure that an emergency plan and an infection prevention and control program are in place.^[41]

A licensee cannot interfere with or prevent an external care provider from providing services to a resident. A licensee is not responsible for ensuring that these services meet the prescribed care standards.^[42] Nonetheless, if the resident requests information relating to the provision of care by an external provider, the licensee must provide information that is readily available.^[43]

Each resident must also be assessed and given a written plan of care within the prescribed times when his/her residency begins.^[44] The licensee must document the provision of the care services and the outcomes of the type set out in the plan. It is up to the licensee to ensure that the resident's plan of care is reviewed and revised at least every six months, or any other time if, in the opinion of the licensee or the resident, a goal in the plan is met, the resident's care needs change or are no longer necessary, or if such care services have not been effective.^[45]

Along with ensuring that staff have the proper skills and qualifications, when hiring staff and accepting volunteers to work in the home, a licensee must ensure screening measures are conducted. Screening measures include a police background check, unless the person being screened is under 18 years of age.^[46] All staff members must also receive training on a number of items, including: the Residents' Bill of Rights, injury prevention and all acts, regulations and policies of the Authority.^[47] An exception is given to staff employed for emergencies or in exceptional and unforeseen circumstances, in which case training must be provided within one week of when the person begins performing their duties, with ongoing training as required by the regulations.^[48] The Act provides a list of additional training required by direct care staff who have continual contact with residents.^[49] Training of volunteers is also prescribed.^[50]

Every licensee is required to protect its residents from abuse by anyone and from neglect by the licensee and its staff of the home. These duties do not apply if a resident is absent from the retirement home, unless the resident continues to receive care services from the licensee or the staff of the home.^[51] Every licensee must also ensure that there is a written policy to promote zero tolerance of neglect and abuse of residents.^[52]

Restraint and confinement of residents is prohibited, subject to limited exceptions, including where it is necessary to prevent serious bodily harm to the resident or to others.^[53]

Reduction In Care Services

The Act provides that a licensee shall not reduce the care services that it makes available in the home, unless the licensee: has given written notice to each resident (and his/her substitute decision-maker, if any) indicating the date the reduction will take effect, at least the prescribed number of days before the reduction takes effect; if the resident indicates that he/she will continue to reside in the home, facilitates the resident's access to external care providers that the resident needs; and, if the resident indicates that he/she will not continue

to reside in the home, has taken reasonable steps to find appropriate alternate accommodation for the resident.^[54] Moreover, if the regulations prescribe care services for a class of licence, a licensee cannot provide more, fewer or different care services than the types of services authorized for that class.^[55]

Complaints

The Act requires licensees to ensure that there is a written procedure to receive and reply to complaints.^[56] A licensee also has a duty to immediately investigate incidents of wrongdoing.^[57]

Enforcement

Under the Act, the Registrar is an inspector by virtue of his/her office.^[58] The Registrar may appoint additional inspectors.^[59] Inspection of a retirement home, or any place that is operated in connection with a retirement home, may be conducted without notice and without warrant for the purpose of determining if the licensee is in compliance with the Act. The same applies if an inspector has reasonable and probable grounds to believe that a residential complex (or part of it) is being operated without a license.^[60] The Registrar must also ensure that every licensed retirement home is inspected at least once a year.^[61] An inspector has many powers when conducting an inspection, including the authority to question individuals and demand the production of records where supported by a warrant that is issued by a justice of the peace.^[62]

Complaints to the Registrar

The Registrar must promptly review any complaints made to him or her. When doing so, the Registrar may issue a written request for relevant information from the licensee,^[63] specifying the nature of the complaint.^[64] The Registrar has many powers when dealing with the complaint process. One such power is an inspection of a retirement home that must be conducted immediately by the Registrar if any of the following incidents are alleged to have occurred and resulted in harm or a risk of harm to a resident of that home: improper or incompetent treatment or care; abuse; neglect; contravention of a requirement under the Act; or other unlawful conduct.^[65]

A person who makes a complaint to the Registrar may have it reviewed by the Complaints Review Officer if the Registrar decides to take no further action after reviewing the complaint.^[66] If the Complaints Review Officer is not satisfied with the Registrar's consideration of the complaint, the Complaints Review Officer shall refer the complaint back to the Registrar with a recommendation that the Registrar take further action in respect to the complaint. The decision of the Complaints Review Officer, whether in favour of the complainant or not, must be written and sent to the complainant and to the licensee.^[67]

Orders of the Registrar

If the Registrar believes on reasonable grounds that a person is operating a retirement home without a licence, the Registrar may serve an order requiring the person to either apply for a licence or to cease to operate the premises as a retirement home by a specified date.^[68] The Registrar may also issue a compliance order requiring a licensee to refrain from doing something, or to do something if a licensee has contravened a requirement under the Act.^[69] Alternatively, the Registrar may serve a management order ordering the licensee to employ or retain, at the licensee's expense, one or more persons acceptable to the Registrar to manage or assist in managing all or some of the operations of the home.^[70]

Offences

Individuals who are convicted of offences under the Act are subject to a number of penalties, including: imprisonment and/or a fine of no more than \$25,000 on a first conviction and imprisonment and/or a fine of not more than \$50,000 for each subsequent conviction.^[71] Convicted corporations incur higher fines.^[72]

Whistle Blowing

The Act provides "whistle-blowing" protection against retaliation or threat against individuals who have provided evidence or disclosed anything to the Registrar or an inspector.^[73]

Conclusion

The Act is a comprehensive piece of legislation that extends a health care regime to retirement homes, regardless of the scope of services provided to residents. Once the entire Act comes into force, it will provide significant new rights to residents and significant costs and obligations for operators. Some of these rights, costs and obligations will be affected by the initial regulations that are ultimately established. The public consultation for those regulations will offer stakeholders an important opportunity to shape the implementation of this new regulatory regime. Therefore, it is important that stakeholders consider the impact of the Act.

[1] <http://www.ontarioremembers.ca/seniors/english/news/2010/n20100330.shtml>

[2] Currently, there are no regulations under the Act. Subject to specific exceptions, the Act provides that the initial regulations must be subject to a public consultation process involving public notice of the proposed regulation and an invitation for comments from the public. This public consultation period will offer stakeholders an important opportunity to shape a number of aspects of how this new regime is implemented.

[3] S. 1 RHA.

[4] S. 17 RHA.

[5] S. 16(a)-(e) RHA.

[6] S. 19(1) RHA.

[7] S. 19(2) RHA.

[8] S. 23(1).

[9] S. 25(1).

[10] S. 24(1) & (3)(a)(b) RHA.

[11] S. 24(4)(b) & (c) & (5).

[12] It is not clear when, if ever, this report is to be made available to the public.

[13] S. 24(8) & (9).

[14] S. 21(1) & (4) RHA.

[15] S. 27(2).

[16] S. 31(1).

[17] The Act is not clear on this.

[18] S. 31(3).

[19] S. 28(1).

[20] S. 28(2).

[21] S. 33(1). Those operating retirement homes on the day the Act comes into force will be deemed to be licensed until the Registrar issues a licence do so or refuses to do so (33(2)). A Licence once issued is not transferable.

[22] S. 35(2).

[23] S. 37(1).

[24] S. 37(2).

[25] S. 40.

[26] The written submissions may be made with respect to any matter set out in the notice.

[27] S. 41.

[28] S. 42.

[29] S. 43.

[30] S. 109(1).

[31] S. 109(2).

[32] S. 46.

[33] S. 53(1), 54.

- [34] S. 54(1), 55(1).
- [35] S. 56(1), (3).
- [36] S. 56(4).
- [37] S. 57(1).
- [38] S. 58(1).
- [39] S. 58(3).
- [40] S. 58(4).
- [41] S. 60(4).
- [42] S. 61.
- [43] S. 63(1).
- [44] 62(1).
- [45] S. 62(12).
- [46] S. 64, 65(1).
- [47] S. 65(2).
- [48] S. 65(3), (4).
- [49] S. 65(5).
- [50] S. 66.
- [51] S. 67(1), (2), (3).
- [52] S. 67(4), (5).
- [53] S. 68(1), (2); 69, 70(1), (2), 71(1).
- [54] S. 44(1).
- [55] S. 44(2).
- [56] S. 73(1).
- [57] 74.
- [58] S. 76(2).
- [59] S. 76(1).
- [60] S. 77(1), (2).
- [61] S. 77(3).
- [62] S. 79(1).
- [63] S. 83(1).
- [64] S. 83(2).
- [65] S. 84, 85.
- [66] S. 88(1).
- [67] S. 88(9), (10).
- [68] S. 89.
- [69] S. 90(1).
- [70] S. 91(1).
- [71] S. 99(1).

[\[72\]](#) S. 99(2).

[\[73\]](#) S. 115(1).

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