



Submissions on
Fixing the Long-Term Care Act 2021
Phase 1 Regulations

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BAR ASSOCIATION
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Introduction

The Ontario Bar Association (OBA) appreciates the opportunity to provide this submission in response to the Ontario Regulations: Fixing the Long-Term Care Act 2021. The Elder Law Section and the Health Law Section of the Ontario Bar Association have collaborated to identify concerns with respect to the draft **Ontario Regulations** to be made under the **Fixing Long-Term Care Act 2021**.

The Ontario Bar Association

The OBA is the largest and most diverse volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system, providing services to people and businesses in virtually every area of law in every part of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and delivers over 325 in-person and online professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

In preparing this submission, the OBA has sought input from a critical cross-section of the bar, including senior and junior lawyers, from managing partners to new calls, who practise across Ontario as solicitors and barristers in solo, small, medium and large firms from all eight judicial regions of the province.

Overview

The lawyers of the Health Law and Elder Law Sections of the Ontario Bar Association formed a Working Group to review the proposed Regulation. Although the lawyers who form part of the Health and Elder Law Sections advise and represent various stakeholders in the senior's sector and may have different perspectives regarding the Act and draft Regulation, we do agree that the following provisions in the Regulation need more attention and thought.



Comments

PART I - INTERPRETATION – DEFINITION OF “CAREGIVER”

Section 4 of the Regulation contains the definition of “Caregiver”. According to that definition, a caregiver must, inter alia, be at least 16 years of age and provide support or assistance to meet the needs of the resident, including social or emotional support. From our perspective, there are likely many long-term care residents who derive social and emotional support from their grandchildren, nieces, nephews, etc. who may be under the age of 16 years old. Including age restrictions in the definition of caregiver will unduly restrict resident access to caregivers of their choice. Thus, in our view, there ought not be age restrictions when defining caregivers who are designated by a resident or their substitute decision-maker.

PART II - RESIDENTS: RIGHTS, CARE AND SERVICES – DIRECT HOURS OF CARE

Sections 8 and 9 of the Act establish “targets” for direct care for residents that is a provincial average to be provided per resident per day. In our view, setting targets for direct care for residents based on a provincial average is inconsistent with the fundamental principle of the Act and resident rights. That is, the fundamental principle to be applied in the interpretation of the Act includes that long-term care homes must be operated so that they are a place where residents’ physical and psychological needs are adequately met. Further, the Residents’ Bill of Rights states that “every resident has the right to proper accommodation, nutrition, care and services consistent with their needs”. In order to fulfill the fundamental principle of the Act, and fully respect and promote resident rights, the direct hours of care to be provided to residents as set out in ss. 8 and 9 of the Act should not be targets. The direct hours of care should be mandated as minimum requirements for residents living in long-term care homes. This minimum number of hours of direct care should not be based on an average across all long-term care homes as this creates a skewed result for those homes that are smaller versus larger. Rather, the minimum direct care hours should be a requirement to be achieved in respect of each resident. To support long-term care homes with providing minimum direct care hours for residents, the Ministry must commit to and provide adequate funding to long-term care homes. As well as take necessary and immediate steps to address the current and ongoing staffing



crisis. The Regulation should explicitly commit the Ministry to providing funding to long-term care homes for mandated minimum direct care hours for residents.

PART III – QUALITY – LONG-TERM CARE QUALITY CENTRE

Section 42 of the Act states that “Every Licensee of a long-term care home shall implement a continuous quality improvement initiative.” However, Section 44(1) states “the Minister may establish a Long-Term Care Quality Centre.” Long-term care homes are receptive to, and have requested, guidance with respect to building capacity and excellence in the long-term care system. In her recommendations from the Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System, Commissioner Gillese recommended that the Ministry must play an expanded leadership role in the system by establishing a dedicated unit to (i) support long-term care homes in achieving regulatory compliance; and (ii) identify, recognize, and share best practices leading to excellence in the provision of care in long-term care homes. Ontario’s long-term care homes system is in need of a Long-Term Care Quality Centre modelled on Commissioner Gillese’s recommendation. Our long-term care sector already has three Centres for Learning, Research & Innovation (“CLRIs”) which support long-term care homes across the province. The Regulation must provide for the establishment of a Long-Term Care Quality Centre, which can be formed from our existing CLRIs. A Long-Term Care Quality Centre can then support the continuous quality improvement initiatives mandated for all long-term care homes under Section 42 of the Act and Section 66 of the Regulation.

PART IV- STAFFING FLEXIBILITY - MISSING FROM THE ACT AND REGULATIONS

The Act permits the Lieutenant Governor in Council to make regulations, inter alia, governing duties that the staff of a long-term care home are required to perform. We propose language in the Act and/or its Regulation which will allow regulated health professionals to carry out duties in long-term care homes which are within their full scope of practice as outlined in the Regulated Health Professions Act and associated legislation (e.g. Medicine Act, Nursing Act, Pharmacy Act). Allowing regulated health professionals to perform duties in a long-term care home within their full scope of practice will allow for staffing flexibility which will help alleviate pressures of the current and ongoing staffing crisis. For example, pharmacists should be permitted to give flu shots to long-term



care residents and physiotherapists should be permitted to provide wound care – both of which are not currently permitted. Legislating the ability of regulated health professionals to work within their full scope of practice in our long-term care homes will help ensure that residents get more direct care in a manner which ensures their health and safety. Currently, the Regulation appears to be silent on this issue which should be addressed in Part V – Operation of Homes.

PART V – OPERATION OF HOMES – VISITOR POLICY

Section 268 of the Regulation requires long-term care homes to maintain visitor logs, which include, inter alia, “the purpose of the visit”. We appreciate that a long-term care home may need the name and contact information for visitors for contact tracing and other reasons. However, the purpose of the visit does not appear to be information required by long-term care homes to fulfill obligations such as contact tracing. Also, requiring visitors to indicate the purpose of the visit may compromise a resident’s privacy rights, which are to be fully respected and promoted in accordance with the Residents’ Bill of Rights. For instance, if a resident were meeting with their legal counsel, it would be inappropriate to indicate the purpose of the visit. We suggest removing the requirement that visitor logs must outline the purpose of the visit.

Conclusion

Overall, the Regulation is another step in the right direction. However, further revisions are needed in order to ensure that long-term care homes are adequately supported by government, the fundamental principle of the Act is achieved and the Residents’ Bill of Rights is fully respected and promoted. We must ensure that the new legislation mandates and safeguards appropriate care, supports, privacy and quality of life for our province's vulnerable and deserving long-term care residents.

The OBA appreciates the opportunity to comment on the important issues presented in the Consultation Paper and looks forward to further engagement on this topic as the Task Force moves forward with its work.