



**Response to the
Ontario Seniors' Secretariat on:**

**Phase Two of Proposed Initial Draft
Regulations under the
Retirement Homes Act, 2010**

**Registered Nurses'
Association of Ontario**

June 24, 2011



Response to Phase Two of Proposed Initial Draft Regulations under the Retirement Homes Act, 2010

Summary of Recommendations

RNAO recommends that:

- 1. Changes be made to the *Retirement Homes Act* at the earliest opportunity to impose a limit or cap on the health-care services that can be provided to residents of retirement homes. Residents with moderate to complex health-care needs and those with significant mental health needs should not receive care from a retirement home.**
- 2. Regulations require licensees to provide evidence that extra expense insurance has been secured on an annual basis.**
- 3. The Registrar provide a description of common contraventions to all known retirement homes before they become licensed, labeling such contraventions as having a major, moderate or minor adverse effect.**
- 4. Regulations include the requirement that, when determining the amount of the administrative penalty, the Registrar consider an impact statement by the resident or substitute decision-maker (SDM) describing the severity of the resident's experience.**
- 5. The word "may" be changed to "shall" in 64.1 (3), so the regulation states "The authority shall make payments into the Fund".**
- 6. Section 64.2(1)(c) of the draft regulation be removed, as it places an inappropriate and onerous burden on many residents during emergencies.**
- 7. The regulations require the Authority to use the emergency fund to provide immediate and full funding for alternate accommodation and care services that are appropriate for each resident who has, in the opinion of the registrar, experienced an unforeseen emergency and is unable to safely continue residing or receiving care normally provided in the home.**
- 8. The Authority inspire compliance with regulations as soon as possible by replacing the statements "a retirement home is not required to comply with...before (date)", or some variation thereof, with "a retirement home is required to comply with...by (date)."**
- 9. The regulations require Retirement Homes to provide information packages to every resident in their home by January 1, 2012 and to every new resident thereafter.**



RNAO

Registered Nurses' Association of Ontario
L'Association des infirmières et infirmiers
autorisés de l'Ontario

Hon. Sophia Aggelonitis
Minister Responsible for Seniors
Ontario Seniors' Secretariat
777 Bay Street, 6th floor
Toronto, ON M7A 2J4

June 24, 2011

Dear Minister,

Thank you for the opportunity to respond to Phase Two of the Initial Draft Regulations under the *Retirement Homes Act, 2010 (RHA)*.¹ The Registered Nurses' Association of Ontario (RNAO) applauds the Ontario Seniors' Secretariat (OSS) for taking steps to protect residents who wish to live in security, safety and comfort within Ontario Retirement Homes. As an advisor to the Seniors' Secretariat on the development of the regulations, RNAO is pleased to see that a number of phase one draft regulations were thoughtfully reconsidered and revised accordingly. By July 1, 2012, the *Retirement Homes Act, 2010* and supporting regulations will become fully enacted, providing a welcome piece of legislation given the previous lack of regulatory oversight. We support you in continuing this process of consultation and deliberation as together we strive to "get it right".

To that end, RNAO continues to express concern that the Retirement Homes Act, 2010 has opened the door to a two-tiered system of health care services for the elderly. Of equal concern, RNAO is alarmed that current regulations are insufficient to protect the most vulnerable and instead focus on accommodating the needs of more healthy and vocal residents.

Please find enclosed our response to Phase Two of the Initial Draft Regulations. We trust these recommendations and supporting rationale will serve the Secretariat well as it considers how seniors in retirement homes can remain a vital part of Ontario's vibrant communities.

With warm regards,

Doris Grinspun, RN, MSN, PhD,
LLD(hon), O.ONT
Executive Director, RNAO

Registered Nurses' Association of Ontario Response to Phase Two of Proposed Initial Draft Regulations under the *Retirement Homes Act, 2010*

The Registered Nurses' Association of Ontario (RNAO) is the professional organization representing registered nurses in Ontario. It is the strong, credible voice leading the nursing profession to influence and promote healthy public policy. We welcome the opportunity to respond to Phase Two of the Initial Draft Regulations under the *Retirement Homes Act, 2010*.

Background

On June 8th, 2010, the *Retirement Homes Act, 2010* received Royal Assent. Less than one year later, the second of multiple draft regulations has been released for consultation by the Ontario Seniors' Secretariat. Part of the Act is covered in the draft regulation subject to this consultation. "Future phase(s) of the proposed regulations are expected to be posted for public review and comment later in the year", which will include regulations for confinement and dementia care.²

Nurses applaud the Ontario Seniors' Secretariat (OSS) for taking steps to protect residents in Ontario retirement homes who wish to live in security, safety and comfort. The *Retirement Homes Act, 2010* was a welcome piece of legislation given the previous lack of regulatory oversight. It is for this reason that the RNAO is pleased to see swift implementation of the regulations, particularly if the regulations are strengthened along the lines recommended in this submission.

A. Introduction of Two-Tier Health Care Services

Significant concerns continue to be voiced by the RNAO and other seniors' advocacy groups that the *Retirement Homes Act* fails to prevent the introduction of two-tiered health care services for the elderly. It is fundamental that regulation of retirement homes must not be allowed to result in a slippery slope to privately-owned, for-profit retirement homes offering the same level of health-care services as long-term care homes for those who can afford to pay privately for that care. While not within the purview of this regulation, the RNAO takes this opportunity to yet again urge the government in the strongest terms to fix the *Retirement Homes Act, 2010* as soon as feasible to impose a limit or cap on the health-care services that can be provided to retirement home residents. Residents with moderate to complex health-care needs and those with significant mental health needs should not receive care from a retirement home.

Many of the proposed initial draft regulations under the *Retirement Homes Act, 2010* reflect those currently enforced in long-term care homes. While this lends strength to the retirement home regulations and protects the most vulnerable, retirement home regulations without a cap must somehow address the diverse health care needs of both healthy residents and the most frail; those who have a strong voice and those who have no voice; those with strong family advocates and those who have no family to speak of. The inevitably broad regulations require compromise; however seniors should be afforded the same protection wherever they live. This means similar regulations should be enforced regardless if care is provided in a LTCH or a Retirement Home.

RNAO Recommends that:

- **Changes be made to the *Retirement Homes Act* at the earliest opportunity to impose a limit or cap on the health-care services that can be provided to residents of retirement homes. Residents with moderate to complex health-care needs and those with significant mental health needs should not receive care from a retirement home.**

B. Extra Expense Insurance

5.1(4) states that “the Registrar may at any time request that a licensee give the Registrar a certificate of insurance issued by an authorized insurer that demonstrates that the licensee has the extra expense insurance required by subsection (3) and the licensee shall provide the certificate within the time period specified by the Registrar.

RNAO proposes that the onus for providing evidence of securing this insurance, which may significantly impact the safety and security of many Ontario residents, should be provided by the retirement home to the Registrar on an annual basis. This requirement would not be overly burdensome for the retirement home nor the Registrar and yet this would safeguard residents significantly.

RNAO Recommends that:

- **Regulations require licensees to provide evidence that extra expense insurance has been secured on an annual basis.**

C. Administrative Penalties

Section 60.1 (1) 1 states “The Registrar shall determine whether, in his or her opinion, the contravention had a major, moderate or minor adverse effect, or the potential to have such an adverse effect, on residents of a retirement home or other persons.”

RNAO is concerned that, over time, there may be inconsistencies in the opinion of the registrar. We suggest that the Seniors’ Secretariat consider possible common contraventions and explain to the sector *a priori* what would constitute major, moderate or minor adverse effects. Given that the registrar is currently an unknown entity, it may be difficult for some retirement homes to predict what might be the opinion of the Registrar.

In addition, three criteria for determining the amount of the administrative penalty for contravention have been proposed. We recommend that an impact statement describing the severity of the resident’s experience be added to the list of criteria.

RNAO Recommends that:

- **The Registrar provide a description of common contraventions to all known retirement homes before they become licensed, labeling such contraventions as having a major, moderate or minor adverse effect.**

- **Regulations include the requirement that, when determining the amount of the administrative penalty, the Registrar consider an impact statement by the resident or substitute decision-maker (SDM) describing the severity of the resident's experience.**

D. Emergency Fund

Section 64.1 (3) states that "The Authority may make payments into the Fund", however the *Retirement Homes Act, 2010* c.11, s. 27(2) states that "The Authority shall make payments into the Fund, hold the property of the Fund in trust, make payments out of the Fund, require repayment to the Fund and otherwise administer and manage the Fund in accordance with the regulations.

Stronger language is required because approval of claims made by residents is contingent on whether the emergency fund "has the capacity to make the payment" (see 64.3(2)4.)

RNAO Recommends that:

- **The word "may" be changed to "shall" in s.64.1 (3), so the regulation states "The authority shall make payments into the Fund".**

E. Claims

Section 64.2(1) (c) states "the individual took all reasonable steps to mitigate the costs mentioned in clause (b);"

The individual referred to in s.64.2(1)(c) is "unable to safely continue residing or receiving care normally provided in the home". Given that the individual is experiencing an emergency and may not have adequate housing or appropriate care, their capacity to respond in a reasonable manner may be significantly diminished. Accordingly, this regulation should be removed as it is simply too onerous for many residents to accommodate.

RNAO Recommends that:

- **Section 64.2(1) (c) of the draft regulation be removed, as it places an inappropriate and onerous burden on many residents during emergencies.**

F. Approval of Claims

Section 64.3(2) 2. States "Payment to the claimant would assist the claimant to find, move to or pay for alternate accommodation or to access alternate care providers."

Given the length of time required to process the approval for claims, it may be disingenuous to suggest the claim would assist the claimant in finding, moving to or paying for alternate accommodation or to access alternate care providers. The draft regulation proposes that the claimant, while living in a state of emergency, must:

- respond to the Authority's request for information and document, according to s.64.2(2),
- must have exhausted any or all legal remedies available to him or her before having their claim approved according to s.64.3(5)(a),
- wait for a decision to be reached by the Registrar and communicated by the Authority;

- rely on the Fund having the capacity to make the payment.

This process is simply not timely. The right thing to do, at any time but particularly when an older person is managing an emergency, is to ensure funds are consistently available to cover appropriate accommodation and care services whenever and wherever they are required. Our concern is particularly for the frailest residents, who may not recover from an emergency without appropriate care and housing. Withholding funds following an emergency, when appropriate care is required, is unethical. Reimbursement of such claims would be contingent on the level of care the resident received prior to the emergency and should not be limited to \$10,000 or 120 days.

RNAO Recommends that:

- **The regulations require the Authority to use the emergency fund to provide immediate and full funding for alternate accommodation and care services that are appropriate for each resident who has, in the opinion of the registrar, experienced an unforeseen emergency and is unable to safely continue residing or receiving care normally provided in the home.**

G. Transition

Overall, RNAO is pleased with the conditions that retirement homes are required to meet in order to acquire licenses to operate. The tone set by the draft regulations, however, is lenient. “The licensee of a retirement home is not required to comply...” is stated no less than eleven times throughout phase two of the regulations. Such a tone does little to encourage adherence to the fundamental principle of the Act, which is that a retirement home is to be a place where residents:

“Live with dignity, respect, privacy and autonomy,
Live in security, safety and comfort, and
Can make informed choices about their care options.”³

RNAO Recommends that:

- **The Authority inspire compliance with regulations as soon as possible by replacing the statements “a retirement home is not required to comply with...before (date)”, or some variation thereof, with “a retirement home is required to comply with...by (date).”**

H. Information for Residents

Section 64.7 (2) states “Despite subsection (1), after January 1, 2012 a licensee shall provide the package of information mentioned in clause 54(1)(a) of the Act to a resident who commenced resident before January 1, 2012 if the resident or a substitute decision-maker of the resident so requests.”

Residents, retirement homes and the Authority would all benefit from each resident having received information regardless of their occupancy date. This will reduce confusion, and could reduce liability and associated costs.

RNAO Recommends that:

- **The regulations require Retirement Homes to provide information packages to every resident in their home by January 1, 2012 and to every new resident thereafter.**

I. Conclusion

We thank the Ontario Seniors' Secretariat for the opportunity to comment on Phase Two of the Proposed Initial Draft Regulations under the *Retirement Homes Act, 2010*. We support the government as it moves quickly to implement the protections under the Act, but not before first adequately protecting the most frail and vulnerable residents in retirement homes today as recommended above. It is absolutely vital that we take the time required to get the regulations right.

It is also essential that the government ensure sufficient funding within the public, not-for-profit system to support the Ministry of Health and Long-Term Care's Aging at Home strategy and the availability of age-appropriate care from home and community care, long-term care and hospital care.

RNAO looks forward to continuing to work closely with the Ontario Seniors' Secretariat to develop regulations that will improve the care and quality of life for the thousands of Ontarians who call retirement homes their home.

With warm regards,



Doris Grinspun, RN, MSN, PhD, LLD(Hon), O.ONT
Executive Director, RNAO

References

¹ Ontario Seniors' Secretariat (2010). *Retirement Homes Act, 2010*.

² Ontario Seniors' Secretariat (May 20, 2011). Personal communication.

³ Ontario Seniors' Secretariat (2011). Notice of Phase Two of Proposed Initial Draft Regulations: Notice of the Minister Responsible for Seniors (Ontario Seniors' Secretariat) under the *Retirement Homes Act, 2010*.