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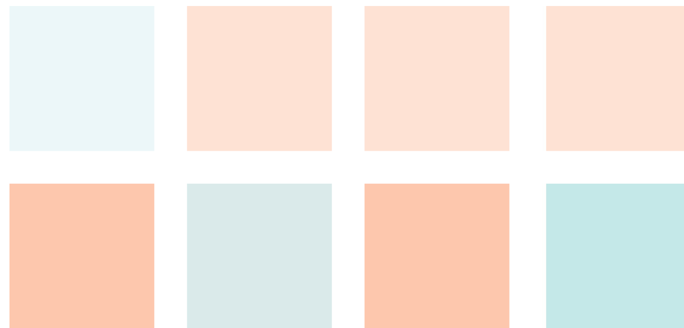
Registered Nurses' Association of Ontario
L'Association des infirmières et infirmiers autorisés de l'Ontario



Response to the Ontario Seniors' Secretariat on:

Initial Draft Regulations under the Retirement Homes Act, 2010

Registered Nurses' Association of Ontario

April 8, 2011

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Response to Draft Regulations under the Retirement Homes Act, 2010

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Summary of Recommendations

RNAO recommends:

1. **Regulations under the *Retirement Homes Act, 2010* be implemented without further delay once they have been strengthened as recommended in the RNAO submission.**

2. **Changes be made to the *Retirement Homes Act, 2010* 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.**

3. **Regarding the definition of Abuse and Neglect:**

   a. **The Regulatory Authority establish a third-party complaints investigator role to respond to residents' complaints of abuse while safeguarding residents in their residency, and educating staff / family about the various types and related impacts of elder abuse.**
   b. **The definition of "neglect" in the draft regulation be expanded to include systemic neglect and the failure to make best efforts to meet and fund best practices for standards of care and staffing.**
   c. **The Regulatory Authority adopt a provincial standard for a zero tolerance policy for abuse and neglect, using RNAO's Preventing and Managing Violence in the Workplace Best Practice Guideline as a model of a comprehensive and strategic approach.**
   d. **The Regulatory Authority require adequate funding for staffing, mandatory education and leadership development to prevent, identify and respond to abuse and neglect.**
   e. **The regulatory college of any regulated staff be immediately notified of any alleged, suspected or witnessed incident of abuse or neglect in addition to the police notification requirement in s.15(3)(f) of the draft regulation.**
   f. **The regulatory authority require all licensees to require all staff to obtain a police check before starting work, and to dismiss any potential employee or student on placement who presents a police check that discloses criminal activity. Furthermore, all current staff would undergo annual police checks and if criminal activity is disclosed, their employment would be terminated immediately.**
   g. **The minimum number of residents proposed to receive care at a retirement home be reduced to no more than 4 residents, thus reducing the potential for less visible neglect and abuse in unregistered boarding-houses.**

4. **That the Regulatory Authority enforce tight temperature controls with either a range of acceptable temperatures or a minimum and maximum temperature requirement for the home.**

5. **That all staff involved with food preparation should successfully complete a food handling training program offered by their local health unit.**

6. **That the regulations require licensees to initiate falls prevention committees to gather statistics tracking the circumstances of preventable falls and follow best practice guidelines on suitable corrective actions.**

7. **That the regulations require licensees to report all adverse and sentinel events caused by medication errors to the Regulatory Authority on a quarterly basis.**

8. **That the medication "route" also be documented in the medication administration records (see s. 33 (a)).**

9. **That the Ontario Seniors' Secretariat include requirement for licensees to offer timely and routine access to dental care, including emergency dentistry.**

10. **That the Ontario Seniors' Secretariat include a regulation that all diabetic nail care be provided by employees with advanced training in nail care, similar to long-term care home requirements.**

11. **That retirement homes be limited by the regulations to providing care services other than dementia.**

12. **That the retirement home regulations require an assessment of dehydration, the presence of pressure ulcers, uncontrolled pain, behavioural issues and the need for assistance with activities of daily living during the initial assessment of the resident.**

13. **That the regulation establish a minimum staff mix in retirement homes of one registered nurse full-time equivalent (FTE) per 100 residents, and one FTE registered practical nurse per 50 residents for homes that provide one care service or more.**

14. **That the government stay on track with its commitment to achieving 70 per cent full-time employment for nurses and personal support workers as crucial in ensuring continuity of caregiver and positive outcomes for retirement home residents**.

15. **That the government address the inequity in wages between the acute care and community and retirement home sectors to facilitate recruitment and retention and ensure continuity of care-giver and the best quality patient care**.

16. **That the Ministry of Health and Long-Term Care commission research to determine appropriate staffing levels and staff mix in retirement homes to allow retirement homes to better plan staffing needs in the short and medium term.**

17. **That the retirement home regulations require a daily minimum of 0.5 hours of activation and recreational programs that promote socialization, engagement in social activities, mental and physical stimulation for residents of retirement homes.**

18. **That LHINs be engaged in creating incentives for retirement homes that implement cultures that support evidence-based best practices that avert costly hospitalizations.**

19. **That mandatory reporting in writing be required where a restraint is used and any measures implemented to minimize the use of restraints. This should include educational programs to understand aggression in the elderly and prevent its escalation.**

20. **RNAO recommends that the Regulatory Authority require and enforce adequate funding from the licensee to ensure adequate numbers of nurses and other care providers. Staffing levels should permit Directors of Care for large facilities to focus on leadership and operations, in addition to allowing the use of full-time rather than replacement nurses / health care providers in monitoring residents in restraints.**

21. **That implementation of the *Retirement Homes Act, 2010* require appropriately educated registered nurses dedicated to infection prevention and control to ensure all retirement homes have the capacity to implement the infection prevention and control program consistent with best practices and professional standards.**

22. **That pandemic planning be added to the emergency plan for retirement homes with more than ten residents as per s.26 (3)1.**

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
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April 8, 2011

Dear Minister,

Thank you for the opportunity to respond to the Initial Draft Regulations under the *Retirement Homes Act, 2010 (RHA)*[1] When the *Retirement Homes Act, 2010* was first introduced the Registered Nurses' Association of Ontario (RNAO) applauded the Ontario Seniors' Secretariat (OSS) for taking measures to protect the most vulnerable residents in Ontario retirement homes. The *Retirement Homes Act, 2010* was a welcome piece of legislation given the increasing complexity of care provided along with a persistent lack of regulatory oversight. Significant concerns were voiced by the RNAO and others, however, that the legislation introduced failed to prevent the introduction of a two-tiered system of health care services for the elderly. Moreover, RNAO was concerned that the Act did little to protect the most vulnerable in order to accommodate the needs of more healthy and vocal residents.

While RNAO, along with many seniors' advocacy groups, strongly supports a cap to health care services provided in retirement homes, a cap was regrettably absent when Bill 21 was passed. Many of the proposed initial draft regulations reflect those currently enforced in long-term care homes (LTCHs). While this lends strength to the 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 regulations are inevitably broad. First and foremost, Ontario must "protect seniors living in retirement homes".[2] Seniors should be afforded the same protection wherever they live. This means similar regulations should be enforced regardless if care is provided in a long-term care home or a Retirement Home.

Matching broad regulations with specific needs in an initial draft is a lofty goal. Adequate consultation with significant stakeholders requires dialogue that results in greater understanding over time. RNAO looks forward to continuing to work closely with you to develop initial regulations and, in time, revisions 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, O.ONT
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President, RNAO

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 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 first of two draft regulations has been released for consultation by the Ontario Seniors' Secretariat. Only when the regulations are approved by Cabinet and in place will the Act finally take effect. Most of the Act is covered in the draft regulation subject to this consultation. "Future phase(s) of the proposed regulations will include regulations for the emergency fund, administrative monetary penalties, insurance requirements for retirement homes, confinement and transitional matters to ensure that requirements are attainable… The Ontario Seniors' Secretariat anticipates posting future phase(s) of proposed regulations for public consultation later in 2011."[3]

Nurses applaud the Ontario Seniors' Secretariat (OSS) for taking measures to protect the most vulnerable residents in Ontario retirement homes. The *Retirement Homes Act, 2010* was a welcome piece of legislation given the increasing complexity of care provided along with a persistent lack of regulatory oversight. It is for this reason that the RNAO strongly urges the government not to further delay implementation of the regulation even as the regulation is strengthened along the lines recommended in this submission.

Significant concerns were voiced by the RNAO and other seniors' advocacy groups, however, that the legislation introduced failed to prevent the introduction of a two-tiered system of health care services for the elderly. RNAO continues to be profoundly concerned that regulation of retirement homes must not 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 urge the government in the strongest terms to reopen 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 RNAO encourages the Ontario Seniors' Secretariat to first and foremost "protect seniors living in retirement homes".[4] 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.

Recommendations:

a. **Regulations under the *Retirement Homes Act, 2010* be implemented without further delay once they have been strengthened as recommended in the RNAO submission**.

b. **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.**

A. Requirements for Prevention of Abuse and Neglect

"Abuse" is adequately defined in s.1 as including emotional, financial, physical, sexual and verbal abuse. The policy of zero tolerance of abuse and neglect is evident in s.15 however this policy appears to focus on the role of staff, which may act or fail to act in such a manner as to affect a resident's health, safety or well-being. However, it is often decisions by employers that limit the capacity to provide adequately for residents' health. Systemic neglect, and specifically the failure to make best efforts to meet and fund standards of care and staffing, should be reflected in a stronger definition of "neglect" in the regulation.

A licensee's policy to promote zero tolerance of abuse and neglect should include procedures to support residents who have been abused or neglected as well as to deal with staff who have neglected or abused residents, or who is alleged to have done so. It is insufficient to train staff about the inherent power imbalance between staff and residents. A safe venue, akin to the ombudsman's office, must be established in order for complaints to be perceived as safe enough for residents to speak out without fear of reprisal.

Section 15(3) (f) requires immediate notification of the police of any alleged, suspected or witnessed incident of abuse or neglect (presumably there should be an additional duty to notify the regulatory college for any regulated staff). Section 15 further obliges every incident of abuse or neglect to be analyzed promptly and the effectiveness of a zero tolerance policy to be evaluated at least annually, with a written record to be prepared. Overall, the draft regulation leaves many questions unanswered. For example:

- The regulation expressly applies to abuse or neglect caused by staff, but omits from the zero tolerance policy abuse or neglect by the licensee or anyone else;
- The regulation only contemplates abuse or neglect directed at residents, but is silent on the all-too-common violence that targets volunteers, visitors and staff;
- It is unclear from the draft regulation who investigates allegations of abuse or neglect, what constitutes an "analysis", and the timelines for investigation (except for "promptly" in s.15 (3) (g) (i)).

A useful model of a comprehensive and strategic approach to tackling violence can be found in RNAO's Preventing and Managing Violence in the Workplace Best Practice Guideline,[5] part of the RNAO Best Practices Guideline Program, funded by the Ministry of Health and Long-Term Care. Guideline recommendations include:

- Adequate funding for staffing, mandatory education and leadership development to prevent, identify and respond to violence in the workplace;
- A violence prevention policy within organizations that addresses all forms of violence and that makes safety of patients, staff, volunteers and students a strategic priority;

- Including whistleblower protection for those who report violence in the workplace;
- Development and monitoring of organizational accountability, including but not limited to indicators to measure effectiveness of prevention programs, prevalence and incidence of violence in the work setting, and fair and consistent response to the reporting of violence, regardless of the power base of those involved in the violence.

Recommendations:

h. The Regulatory Authority establish a third-party complaints investigator role to respond to residents' complaints of abuse while safeguarding residents in their residency, and educating staff / family about the various types and related impacts of elder abuse.

i. The definition of "neglect" in the draft regulation be expanded to include systemic neglect and the failure to make best efforts to meet and fund best practices for standards of care and staffing.

j. The Regulatory Authority adopt a provincial standard for a zero tolerance policy for abuse and neglect, using RNAO's Preventing and Managing Violence in the Workplace Best Practice Guideline as a model of a comprehensive and strategic approach.[6]

k. The Regulatory Authority require adequate funding for staffing, mandatory education and leadership development to prevent, identify and respond to abuse and neglect.

l. The regulatory college of any regulated staff be immediately notified of any alleged, suspected or witnessed incident of abuse or neglect in addition to the police notification requirement in s.15(3)(f) of the draft regulation.

m. The regulatory authority require all licensees to require all staff to obtain a police check before starting work, and to dismiss any potential employee or student on placement who presents a police check that discloses criminal activity. Furthermore, all current staff would undergo annual police checks and if criminal activity is disclosed, their employment would be terminated immediately.

n. The minimum number of residents proposed to receive care at a retirement home be reduced to no more than 4 residents, thus reducing the potential for less visible neglect and abuse in unregistered boarding-houses.

B. Requirements for Temperature Control

Given that the elderly are often sensitive to slight changes in temperature, and on average prefer a slightly higher temperature, requiring action on only "extreme" temperature conditions may allow licensees to keep temperatures uncomfortably cool in order to save heating / electricity costs. A minimum and maximum temperature requirement or range of acceptable temperatures is strongly recommended. For example, twenty one degrees Celsius with a range of 3 degrees would likely be sufficient.

Recommendation:

- **That the Regulatory Authority enforce tight temperature controls with either a range of acceptable temperatures or a minimum and maximum temperature requirement for the home.**

C. Requirements for Food Preparation

Food contamination immediately puts sick and vulnerable people, including the elderly, at risk for infectious diseases that could be fatal and could result in a facility-wide outbreak affecting not only residents, but families, volunteers and staff. At minimal cost to the employee, all staff involved with preparing food for residents should successfully complete a food handling training program offered by every health unit. This requirement standardizes not only the training received but the performance of staff that must successfully complete the course to maintain their employment.

Recommendation:

- **That all staff involved with food preparation should successfully complete a food handling training program offered by their local health unit.**

D. Requirements for Falls Prevention and Management

Falls are often prevented by observing trends either in the environment or in the resident's behaviour. A falls prevention committee that tracks the circumstances of preventable falls is highly recommended as a quality improvement initiative. Furthermore, all residents should be assessed at admission and at each annual review to determine their risk of falls using a standard tool for assessment (i.e. Morse falls risk assessment). See RNAO's Best Practice Guideline on Prevention of Falls and Fall Injuries in the Older Adult for these and further recommendations.[7]

Recommendation:

- **That the regulations require licensees to initiate falls prevention committees to gather statistics tracking the circumstances of preventable falls and follow best practice guidelines on suitable corrective actions.**

E. Requirements for Medication Administration

Safe medication administration practices require monitoring medication errors for significant trends and severity. Forgetting to remove a fentanyl patch, for example, is a common mistake because the risk of drug overdose is not easily apparent. Quarterly trending of this error would determine the rate of prevalence and which staff would benefit from additional education. Only medication errors with a severity level of 2 and above should be shared with the resident / substitute decision-maker. All adverse and sentinel events caused by medication errors should be reported on a quarterly basis to the Regulatory Authority. Given the rising acuity of retirement home residents and, consequently, the number of medications / resident that include narcotics, monitoring errors provides one measure to determine if staff preparation for medication administration remains at safe and acceptable levels.

Recommendations:

- **That the regulations require licensees to report all adverse and sentinel events caused by medication errors to the Regulatory Authority on a quarterly basis.**
- **That the medication "route" also be documented in the medication administration records (see s. 33 (a)).**

F. Requirements for Personal Hygiene

Timely and routine access to dental care, including emergency dentistry, is not currently among the regulations for personal hygiene, and yet oral health determines eating behaviour which further determines weight loss, fatigue, blood sugar control, and other important physiological conditions.

In addition, residents with diabetes should have their fingernails cut by staff with advanced training to prevent nics that may worsen into fatal wounds due to the reduced blood circulation in the extremities.

Recommendations:

- **That the Ontario Seniors' Secretariat include a requirement for licensees to offer timely and routine access to dental care, including emergency dentistry.**
- **That the Ontario Seniors' Secretariat include a regulation that all diabetic nail care be provided by employees with advanced training in nail care, similar to long-term care home requirements.**

G. Requirements for Dementia Care Program

Given the degree of vulnerability that residents with dementia experience, RNAO does not believe residents with dementia can be suitably cared for in a for-profit retirement home environment. Their lack of agency precludes this option as the risks inherent in a power-over relationship are too great. Long-term care homes are most often the safest choice for residents who experience chronic dementia. Short term allowances (i.e. 30 days) to treat delirium should, however, be permitted if care can be suitably arranged in the retirement home without physical or chemical restraints.

Recommendation:

- **That retirement homes be limited by the regulations to providing care services other than dementia.**

H. Requirements for Assessment of Care Needs

Given the rapid deterioration of general health that is associated with dehydration, the presence of pressure ulcers, uncontrolled pain, behavioural issues and lack of assistance with activities of daily living, each of these should be assessed during the initial assessment of the resident within two days of a resident moving into a retirement home.

Recommendation:

- **That the retirement home regulations require an assessment of dehydration, the presence of pressure ulcers, uncontrolled pain, behavioural issues and the need for assistance with activities of daily living during the initial assessment of the resident.**

I. Requirements for Staff Mix

With respect to the mix of care providers, casual or replacement staff often is not familiar with individual needs and routines. Meeting the government's commitment to achieve 70 per cent full-time employment is crucial to ensuring continuity of caregiver, prevention and early detection of complications, commitment to resident-centred care and positive relationships between nurses, PSWs and residents.[8] [9] [10] [11]

An additional factor causing fragmented staff complements and difficulty in attracting and retaining full-time regulated staff is the inequity in salary levels between staff in acute care and those working in retirement homes and other community settings. With the aging population and growing acuity of retirement homes, continuity of caregiver is increasingly important to quality of care, and the unfairness in remuneration must be addressed.

Recommendations:

- **That the regulation establish a minimum staff mix in retirement homes of one registered nurse full-time equivalent (FTE) per 100 residents, and one FTE registered practical nurse per 50 residents for homes that provide one care service or more.**
- **That the government stay on track with its commitment to achieving 70 per cent full-time employment for nurses and personal support workers as crucial in ensuring continuity of caregiver and positive outcomes for retirement home residents**.
- **That the government address the inequity in wages between the acute care and community and retirement home sectors to facilitate recruitment and retention and ensure continuity of care-giver and the best quality patient care**.
- **That the Ministry of Health and Long-Term Care commission research to determine appropriate staffing levels and staff mix in retirement homes to allow retirement homes to better plan staffing needs in the short and medium term**.

J. Requirements for Mental Stimulation

The draft regulation is also silent on standards for programs that promote socialization, engagement in social activities, and provide mental and physical stimulation for residents of retirement homes. Section 14(3) (a) mandates a licensee to "ensure that every staff member who provides a care service to a resident has received or receives training in, ways to encourage mental stimulation in residents, ways to provide mental stimulation to residents and the positive effects of encouraging and providing such mental stimulation" but the draft regulation fails to set standards and requirements or outcome measures. A daily minimum of 0.5 hours of activation and recreational programs should be offered.

Recommendation:

- **That the retirement home regulations require a daily minimum of 0.5 hours of activation and recreational programs that promote socialization, engagement in social activities, mental and physical stimulation for residents of retirement homes.**

K. Requirements for Evidence-based Care

A culture of evidence-based practice should be facilitated through the implementation of clinical and healthy work environment Best Practice Guidelines (BPGs) by front-line nurses and staff in retirement homes. These efforts, including training, would be best subsidized by LHINs in an effort to reduce hospitalizations from for-profit retirement homes, which lack financial incentive to prevent or treat preventative chronic conditions that result in costly ambulatory care sensitive conditions.

Recommendation:

- **That LHINs be engaged in creating incentives for retirement homes that implement cultures that support evidence-based best practices that avert costly hospitalizations.**

L. Requirements for Least Restraints

RNAO agrees that a resident restrained under the common law duty set out in s. 71 (1) of the Act and s 53(2) of the regulations must be monitored or supervised on an ongoing basis, with the resident's condition reassessed at least every 15 minutes by a member of the College of Physicians and Surgeons of Ontario or the College of Nurses of Ontario and at any other time based on the resident's condition or circumstances.

Further, RNAO agrees that every use of a physical device to restrain a resident must be documented, including circumstances precipitating the application, who made the order, the device ordered, consent, assessments, monitoring, resident's response to the device, release of the device and repositioning, removal or discontinuance, and post-restraining safety measures.

What is not included however are the alternatives considered. This is vital in order to determine if the least restraint was applied, given the alternatives available. The same is true for s.54, restraint by a drug.

Recommendations:

- **That mandatory reporting in writing be required where a restraint is used and any measures implemented to minimize the use of restraints. This should include educational programs to understand aggression in the elderly and prevent its escalation.**
- **That the government provides adequate funding to ensure needed numbers of nurses and other care providers. Staffing levels should permit Directors of Care for large facilities to focus on leadership and operations, in addition to allowing the use of full-time rather than replacement nurses / health care providers in monitoring residents in restraints.**

M. Requirements for Infection Prevention and Control

Section .28 of the proposed initial draft regulation requires every licensee to institute an infection prevention and control program. However it does not specify a staff member to be designated to coordinate the program who has "education and experience in infection prevention and control practices", including cleaning and disinfection, data collection and trend analysis, reporting protocols and outbreak management. It is vital that infection control practitioner services not be less in retirement homes than in acute care facilities. While infection control staff could be shared among smaller facilities, infection control must not merely be an add-on or, in reality, it will not be done. A registered nurse is required, dedicated to infection control, with the appropriate education and commitment to professional standards and best practices in infection control.[12]

Recommendations:

- **That implementation of the *Retirement Homes Act, 2010* require appropriately educated registered nurses dedicated to infection prevention and control to ensure all retirement homes have the capacity to implement the infection prevention and control program consistent with best practices and professional standards**.
- **That pandemic planning be added to the emergency plan for retirement homes with more than ten residents as per s.26 (3)1.**

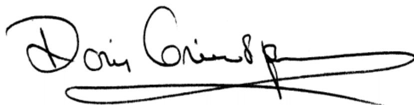
N. Conclusion

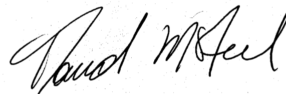
We thank the Ontario Seniors' Secretariat for the opportunity to comment on the proposed initial draft regulations under the *Retirement Homes Act, 2010.* We urge the government to move quickly to implement the protections under the Act, but not before first adequately protecting the most frail and vulnerable residents in retirement homes today as recommended above. It is 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 you to develop regulations that will improve the care and quality of life of the thousands of Ontarians who call retirement homes their home.

With warm regards,





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[2] Ontario Senior's Secretariat (2011). *Notice of Initial Draft Regulations under the Retirement Homes Act, 2010.* p. 1.

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[11] Registered Nurses' Association of Ontario. (2007). *Healthy work environments best practice guideline quick reference guide: Developing and Sustaining Effective Staffing and Workload Practices.* Toronto: author.

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