



OANHSS

Submission to the Ontario Seniors' Secretariat
on the Proposed Initial Draft Regulations under
the *Retirement Homes Act, 2010*

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Ontario Association of Non-Profit Homes and Services for Seniors

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Introduction

The Ontario Association of Non-Profit Homes and Services for Seniors (OANHSS) welcomes the opportunity to provide comments on the proposed initial draft regulations under the *Retirement Homes Act* (RHA). We commend this government for developing a legislative and regulatory framework to ensure a strong, accountable, high-quality and resident-focused retirement home sector.

OANHSS is a provincial, membership-based association that has represented not-for-profit providers of care, services, and housing for seniors for over 90 years. Member operations span the full spectrum of the not-for-profit long term care continuum including seniors' housing, retirement homes, community service agencies, and municipal, non-profit and charitable long term care homes. Association members are respected and recognized for their dedication and commitment to quality care and services, and for the active and integral role they play in the communities they serve.

The diversity that is characteristic of seniors' housing is reflected in the OANHSS membership. Housing models operated by OANHSS members include social housing, supportive housing, life lease housing and non-profit retirement homes. Settings often consist of a continuum of options that can include long term care in addition to a combination of social, supportive, and life lease housing and retirement homes.

OANHSS members retirement homes are large and small; high rise, low rise and townhomes; urban, suburban and rural; stand alone and part of a continuum; serve various cultural, linguistic, religious and geographic communities; and are located throughout the province. Individual retirement home units can range from apartments with full size kitchens to a bedroom without kitchen amenities. This variety of accommodation types reflects the varying needs of seniors and their level of independence. The common denominators across the OANHSS membership are a not-for-profit philosophy, and a commitment to serve seniors and facilitate aging in place.

The recommendations set out in our submission address issues related to the initial regulations as a whole as well as concerns with specific provisions. Our advice is intended to support the government's objectives of a more accountable and resident-focused retirement home sector.

General Comments

1. Allow for Comment on Regulations in their Entirety

Given the scope and interconnectedness between this first set of initial draft regulations and future draft regulations, which we expect to be released in the coming months, it is difficult to provide specific comments on these regulations without knowing what details will be contained in future regulations. It would be more productive if stakeholders had the opportunity to review the entire set of regulations and consider their implications as a whole rather than in separate stages, the latter requiring assumptions of what will be provided for in future regulations. As a result, we recommend that additional comments be permitted on the regulations contained in this initial draft once the remaining regulations are known, so that we might be able to provide a more fulsome and informed response.

Recommendation:

- I. **Government allow for comments and input on all of the regulations once they have been released in their entirety.**

2. Cost and Affordability

There are two distinct delivery models in the retirement homes sector – for profit and not-for-profit. Not-for-profit retirement and care home providers have a higher degree of openness and accountability than their for-profit counterparts; their boards are elected from the communities they serve; their meetings are open to residents and the public; and their “books” or operating budgets are open to the public. Support for these not-for-profit delivery models that include this built-in transparency and accountability should be reflected in the regulations.

Non-profit retirement homes aim to provide quality and affordable accommodation and services and the ability of providers to continue to deliver high-quality, affordable services without significantly increasing costs for residents may be very limited. Our members are concerned that they will not be able to provide an affordable option if they are required to absorb significant additional costs as a result of implementing the requirements contained in the regulations. Sources of new expenses include fees that may be set by the Retirement Home Regulatory Authority (RHRA); remuneration of the Authority; investigations and annual home inspections; new requirements for documentation; training and higher qualification levels for staff.

Recommendation:

- II. Ensure the financial burden for not-for-profit retirement homes associated with implementing the regulations does not limit their ability to offer more affordable housing options for seniors.**

3. Care and Services

Many of the provisions in the regulations allow for retirement home providers, if they choose, to offer a level of care that is consistent with provincial long term care homes. We believe that care and services provided to seniors, regardless of where they are delivered must meet a consistent, minimum standard. We do not believe the government should be constrained in its ability to protect vulnerable seniors according to the type of setting, as all seniors deserve the same protections.

Recommendation:

- III. Ensure that care and services provided to seniors meet a consistent minimum standard, regardless of where they are delivered.**

Specific Provisions: Comments and Recommendations

1. Abuse: Section 1 and Section 15

The definitions of “emotional abuse” and “verbal abuse” contain clauses that acknowledge that a resident may not fully comprehend their actions due to their mental capacity or understanding if it is a resident that has been found to be exhibiting the specific types of abuse. This is not the case with both the definitions of “physical abuse” and “sexual abuse”, which do not take into account a resident’s mental capacity or appreciation of their actions.

Specifically, clause (b) of “emotional abuse” states: “any threatening or intimidating gestures, actions, behaviour or remarks by a resident that causes alarm or fear to another resident where the resident performing the gestures, actions, behaviour or remarks understands and appreciates their consequences.”

Similarly, clause (b) of “verbal abuse” provides for a similar stipulation, specifically: “any form of verbal communication of a threatening or intimidating nature made by a resident that leads another resident to fear for his or her safety where the resident making the communication understand and appreciates its consequences”.

A resident's mental capacity is also not taken into consideration in Section 15.3 (b) relating to the process for enforcing zero tolerance. This section provides that a retirement home's policy to promote zero tolerance of abuse and neglect of residents shall contain procedures to deal with persons who have, or who allegedly have, abused or neglected another resident. It does not allow for consideration of a resident's mental state if in fact it is a resident who has been found to be physically or sexually abusing another resident.

In the definition of "sexual abuse", a licensee or staff member is protected by subsection 3 of Section 1 wherein sexual abuse does not include "touching, behavior or remarks of a clinical nature that are appropriate to the provision of care or assisting a resident with activities of daily living" or if the resident and a licensee were in a sexual relationship prior to the resident living in the retirement home or prior to the licensee or staff member becoming a licensee or staff member. Volunteers in retirement homes often provide assistance to staff in caring for residents, which includes assisting residents with activities of daily living. We would suggest amending this section to allow volunteers to be included in both of these provisions.

Recommendation:

IV. Add to the end of clause (c) of "physical abuse" the following:

"where the resident using physical force on another resident understands and appreciates its consequences."

V. Amend clause (b) of "sexual abuse to include "or volunteer" after "...any consensual or non-consensual touching, behavior or remarks of a sexual nature or sexual exploitation that is directed towards a resident by a licensee or staff member..."

VI. Add "or" to the end of clause (b) of "sexual abuse" and add the following additional clause:

"(c) any non-consensual touching, behaviour or remarks of a sexual nature or sexual exploitation by a resident directed to another resident where the resident exhibiting the touching, behaviour or remarks understands and appreciates its consequences."

VII. Amend Section 15.3(b) to read:

"(b) contain procedures and interventions to deal with persons who have abused or neglected or allegedly abused or neglected residents, as appropriate. Where the person who abused or neglected or allegedly abused or neglected residents is a resident, the procedures and interventions should take into consideration whether the person understands and appreciates the consequences of their actions."

2. Retirement Home – Section 3

The definition of “retirement home” in the regulation excludes homes that do not have a minimum of six residents. These exclusions effectively limit the government from providing protection to a significant number of seniors across the province.

There are examples throughout the province where retirement homes house less than six residents. Often these smaller homes are located in rural or small urban areas or serve Ontario’s lower income population. It is these individuals that are potentially the most vulnerable and shielded from public scrutiny.

We believe the government should not be constrained in its ability to protect vulnerable seniors according to the size of the setting. All seniors deserve the same protections.

Recommendation:

- VIII. **We strongly urge the government to amend Section 3.1 by replacing “at least six” with “one or more”.**

3. Application for Licence – Section 5

We do not feel that clause (f) of Section 5.2 is necessary. This clause requires that an applicant for a licence provide to the Registrar “a statement whether there is an automatic sprinkler in the room of each resident of the retirement home or elsewhere in the home and, if so, information about the sprinklers.”

We are unsure as to the purpose of providing this statement. A fire sprinkler system is not currently required under the *Ontario Fire Code*; as such we are unsure as to why it should be included as part of the application process.

We understand that a consultation by the Ministry of Community Safety and Correctional Services on fire safety and prevention in residences that house vulnerable Ontarians, which includes retirement homes, has just concluded. It may be that as a result of this consultation, retirement homes, in addition to other similar buildings that house vulnerable people, will eventually be required to install a sprinkler system in existing residences or for all future residences.

Since sprinklers are not currently required by law in retirement homes, we do not see the added value of requiring a statement indicating whether the home is equipped with a sprinkler system as part of the application process. If it will be the case that sprinkler systems will be mandated in the *Ontario Fire Code* in the future, then homes will comply. The requirement in the regulations for the RHA should not duplicate similar requirements in other legislation.

Recommendation:

- IX. Delete Section 5.2(f).**

4. Copies of Agreements to Residents – Section 8

The requirement to provide a copy of a specific plan of care agreement to the resident seems excessive. For some residents, a plan of care agreement could be an ever-changing document. We are uncertain as to the added value of providing this agreement when the resident has been consulting with a care provider on their specific care needs.

Recommendation:

- X. Delete the provision to provide a plan of care agreement from Section 8 and replace this agreement with the requirement to provide an outline of the level of service to be provided to a resident. Alternatively, amend this section to provide a plan of care agreement upon request by a resident.**

5. Package of Information for Residents – Section 10

The amount of information that providers are required to give residents, whether requested or not, as outlined in Section 10 of the draft regulation, in addition to the information already required under the RHA in Section 54.2 (specifying approximately 21 documents), could be quite extensive and we question the value for residents. It would be more useful if the information to be provided to residents under the Act and regulations was offered in plain language summaries and where appropriate, standardized by the government for use by all retirement homes.

Recommendation:

- XI. Allow for simple, plain language summaries of each of the requirements outlined in Section 10 of the regulation, in addition to Section 54.2 of the RHA and where appropriate, developed by the government for use by all retirement homes to ensure consistent and standardized information across the province.**

Furthermore, a resident's personal health information needs to remain confidential regardless of whether their records are being used by inspectors in determining whether a licensee is compliant with the RHA. As such, clause 10(h) should specify that if a resident's records are being inspected, copied or removed by an inspector, this information is being used for the sole purpose of determining a licensee's compliance with the Act and their information is kept confidential.

Recommendation:

- XII. Add “sole” following “...from the home for the...” in Section 10(h), to read: “a statement that sections 77 and 80 of the Act authorize an inspector or an investigator respectively to inspect, copy or remove records containing a resident’s personal information, including personal health information, from the home for the sole purpose of determining whether the licensee is in compliance with the requirements of the Act.”**

6. Posted Information – Section 11

We support the requirements for the information outlined in Section 11 to be posted in the retirement home. However, it is unclear what information on evacuation procedures is required in 11(b); specifically, whether it is the procedures to be followed by staff or if it is the procedures to be followed by residents. The evacuation procedures to be followed by staff can be quite lengthy and would not serve to protect the resident if they were posted. The procedures to be followed by the resident, however, are much less detailed and pertain only to the requirements of the resident. We recommend that this section be amended to reflect the evacuation procedures to be followed by the resident.

Recommendation:

- XIII. Add the words “by residents” after “...procedures to be followed...” in Section 11 (b), to read: “an explanation of the procedures to be followed by residents in the case of an evacuation;”.**

Similarly, copies of the most recent final inspection report prepared by an inspector can in some cases be quite lengthy and technical in nature for residents and/or family members to read. We recommend that the Ministry develop a one-page summary document that simply states whether the retirement home is compliant with the RHA and its regulations and if not, list the particular reason(s) why.

Recommendation:

- XIV. Delete Section 11(e) and replace with a requirement to post a one-page summary document of the final inspection report (using a template to be developed by the government).**

7. Residents' Council – Section 12

While we support the provisions outlined in this section, we recommend an amendment to clarify that these provisions do not allow for the release of residents' personal and confidential information, particularly with respect to Section 12.1(a) concerning personal care and programming.

Recommendation:

- XV. Amend Section 12.1(a) to make certain this does not permit the release of personal and confidential health information.**

8. Hiring Staff and Volunteers – Section 13

We support the provisions for police background checks for all new staff and volunteers as outlined in section 13.1; however, the requirements create challenges for retirement homes to hire and recruit staff and volunteers respectively, in an efficient and timely manner. We suggest that the regulations be amended to allow new staff or volunteers to be hired and begin work with the caveat that continued employment is contingent on a successful police background check. The amount of time it takes for completion of a police background check is often quite lengthy (in some cases, in excess of six months). This delay will significantly impact hiring timelines and make it difficult to ensure a full complement of staff. Similarly it makes it difficult to recruit volunteers if they are required to wait six months for the results of a police background check prior to volunteering in the retirement home.

Recommendation:

- XVI. Confirm that “conduct” in Section 13.1 does not mean “completion” and that continued employment or volunteer service of new staff or volunteers at the home is contingent upon a successful police background check.**

9. Staff Training – Section 14

The provisions outlined in Section 14 of the regulations combined with those in the Act, require significant training at least annually for all staff, regardless of whether they require such training. These mandatory requirements will add significantly to education program development and delivery and cannot be accomplished without a significant addition of new human resources.

Additionally, it is unclear what is meant by “mental stimulation” in Section 14.3(a). By not providing a specific definition, it is left to the discretion of the individual licensee as to what would constitute compliance with this section.

Recommendation:

- XVII. Amend Section 14.2 to read: “the licensee shall ensure that the persons who are required to receive training under subsection 65(2) of the Act receive the training as the need arises or if there have been revisions or amendments to the policies or procedures to any of the requirements outlined in 65(2) of the Act.”
- XVIII. Amend Section 14.5 to read: “receive ongoing training as needed based on an assessment of the current level of staff knowledge and training needs.”
- XIX. Amend Section 14.3(a) to provide a definition of what would constitute training in “mental stimulation”.

10. Hazardous Substances – Section 21

Section 21 provides that every licensee ensure that all hazardous substances in a retirement home are labeled properly and are kept inaccessible to residents. Retirement home staff often do not have access to a resident’s “room”, which as already noted, can be an apartment-type accommodation. For seniors in these types of accommodation, a resident should still have the right to, for example, clean their own apartment if they wish, in addition to the cleaning provided in the retirement home’s service package and they should therefore have the right to stock cleaning products in their individual housing units. As a result, staff and a licensee may not be aware that a resident is in possession of a hazardous substance.

Recommendation:

- XX. Amend Section 21 to reflect the fact that a licensee and staff may not necessarily be able to monitor whether a resident is in possession of a hazardous substance in their own room.

11. Provision of a Meal – Section 41

Section 41 should be amended to recognize that some residents prefer to make their own meals, if their unit is set up to allow them to do so. In such cases, it is not clear if a resident is considered to be a “provider of the resident’s meal” and if the licensee would still be required to provide three meals a day, as well as snacks.

Similarly, residents, particularly those in units with kitchens or kitchenettes, may wish to prepare their own snacks, in which case, Section 41 is not clear if the provider would still be required to provide snacks for the resident at certain times throughout the day.

Recommendation:

- XXI. Amend Section 41 to clarify if a resident is considered a provider of their meals and/or snacks.**

12. Dementia Care Program and Provision of Skin and Wound Care – Section 42 and 43

A dementia care program as well as skin and wound care can be interpreted in different ways by different retirement home providers. For example, some retirement home providers may interpret a dementia care program to mean ensuring that a resident wears a wanderguard. Similarly, skin and wound care program could simply mean applying a dry dressing to a skin tear.

Recommendation:

- XXII. Define “dementia care program” and “skin and wound care”.**

13. Initial Assessment of Care Needs – Section 44 and Full Assessment of Care Needs – Section 45

If a common assessment tool will be prescribed in order for licensees to comply with the provisions set out in Section 44 and 45, we encourage the government to consult with the sector as the assessment tool is being developed to allow an opportunity to provide comment and input. This will ensure the tool will meet the required objectives, while at the same time, not being overwhelming or overburdening to residents or licensees.

Recommendation:

- XXIII. If a common assessment tool will be developed for assessing a resident’s care needs, we recommend this be done in consultation with the retirement home sector.**

14. Approval of the Plan of Care – Section 49

Section 49 establishes that a resident’s plan of care be approved by a member of the College of Physicians and Surgeons or the College of Nurses of Ontario (or a person acting under the supervision of a member of either of the two aforementioned Colleges). We would like clarification as to how this service is to be billed by a physician, if that physician is not a member of the staff of that particular retirement home. We are concerned that if the service is not billed under the Ontario Health Insurance Plan (OHIP), either the licensee or the resident will be required to pay for the approval.

Recommendation:

- XXIV. Provide clarification as to how the approval of a resident’s plan of care is to be billed and who will be required to pay for this service.**

15. Procedure for Complaints to Licensee – Section 58

We understand the importance of provisions in the regulations with respect to the procedures to be followed by the licensee in dealing with complaints. What is currently outlined in the regulations is appropriate for written complaints; but, we believe that applying these same requirements to verbal complaints is unnecessarily onerous.

Recommendation:

- XXV. Amend Section 58.2 to reflect only the need to document written complaints and not verbal complaints.**

Conclusion

We appreciate the opportunity to provide input to the initial draft regulations under the RHA. We believe that our recommendations will result in more workable provisions for retirement homes, while respecting the need for a retirement home sector that promotes choice, autonomy, respect, dignity, safety and security for Ontario's seniors.

We look forward to our continued involvement in this important work.

Summary of Recommendations

General Comments

Subsection	Recommendation
Allow for Comments on Regulations in their Entirety	I. Government allow for comments and input on all of the regulations once they have been released in their entirety.
Cost and Affordability	II. Ensure the financial burden for not-for-profit retirement homes associated with implementing the regulations does not limit their ability to offer more affordable housing options for seniors.
Care and Services	III. Ensure that care and services provided to seniors meet a consistent minimum standard, regardless of where they are delivered.

Specific Provisions: Comments and Recommendations

Subsection	Recommendation
Abuse	IV. Add to the end of clause (c) of “physical abuse” the following: “where the resident using physical force on another resident understands and appreciates its consequences.”
	V. Amend clause (b) of “sexual abuse to include “or volunteer” after “...any consensual or non-consensual touching, behavior or remarks of a sexual nature or sexual exploitation that is directed towards a resident by a licensee or staff member...”
	VI. Add “or” to the end of clause (b) of “sexual abuse” and add the following additional clause: “(c) any non-consensual touching, behaviour or remarks of a sexual nature or sexual exploitation by a resident directed to another resident where the resident exhibiting the touching, behaviour or remarks understands and appreciates its consequences.”

Subsection	Recommendation
	<p>VII. Amend Section 15.3(b) to read:</p> <p>“(b) contain procedures and interventions to deal with persons who have abused or neglected or allegedly abused or neglected residents, as appropriate. Where the person who abused or neglected or allegedly abused or neglected residents is a resident, the procedures and interventions should take into consideration whether the person understands and appreciates the consequences of their actions.”</p>
Retirement Home	<p>VIII. We strongly urge the government to amend Section 3.1 by replacing “at least six” with “one or more”.</p>
Application for Licence	<p>IX. Delete Section 5.2(f).</p>
Copies of Agreements to Residents	<p>X. Delete the provision to provide a plan of care agreement from Section 8 and replace this agreement with the requirement to provide an outline of the level of service to be provided to a resident. Alternatively, amend this section to provide a plan of care agreement upon request by a resident.</p>
Package of Information to Residents	<p>XI. Allow for simple, plain language summaries of each of the requirements outlined in Section 10 of the regulation, in addition to Section 54.2 of the RHA and where appropriate, developed by the government for use by all retirement homes to ensure consistent and standardized information across the province.</p>
	<p>XII. Add “sole” following “...from the home for the...” in Section 10(h), to read: “a statement that sections 77 and 80 of the Act authorize an inspector or an investigator respectively to inspect, copy or remove records containing a resident’s personal information, including personal health information, from the home for the sole purpose of determining whether the licensee is in compliance with the requirements of the Act.”</p>
Posted Information	<p>XIII. Add the words “by residents” after “...procedures to be followed...” in Section 11(b), to read: “an explanation of the procedures to be followed by residents in the case of an evacuation;”.</p>

Subsection	Recommendation
	XIV. Delete Section 11(e) and replace with a requirement to post a one-page summary document of the final inspection report (using a template to be developed by the government).
Residents' Council	XV. Amend Section 12.1(a) to make certain this does not permit the release of personal and confidential health information.
Hiring Staff and Volunteers	XVI. Confirm that "conduct" in Section 13.1 does not mean "completion" and that continued employment or volunteer service of new staff or volunteers at the home is contingent upon a successful police background check.
Staff Training	XVII. Amend Section 14.2 to read: "the licensee shall ensure that the persons who are required to receive training under subsection 65(2) of the Act receive the training as the need arises or if there have been revisions or amendments to the policies or procedures to any of the requirements outlined in 65(2) of the Act."
	XVIII. Amend Section 14.5 to read: "receive ongoing training as needed based on an assessment of the current level of staff knowledge and training needs."
	XIX. Amend Section 14.3(a) to provide a definition of what would constitute training in "mental stimulation".
Hazardous Substances	XX. Amend Section 21 to reflect the fact that a licensee and staff may not necessarily be able to monitor whether a resident is in possession of a hazardous substance in their own room.
Provision of a Meal	XXI. Amend Section 41 to clarify if a resident is considered a provider of their meals and/or snacks.
Dementia Care Program and Provision of Skin and Wound Care	XXII. Define "dementia care program" and "skin and wound care".
Initial Assessment of Care Needs and Full Assessment of Care Needs	XXIII. If a common assessment tool will be developed for assessing a resident's care needs, we recommend this be done in consultation with the retirement home sector.

Subsection	Recommendation
Approval of the Plan of Care	XXIV. Provide clarification as to how the approval of a resident's plan of care is to be billed and who will be required to pay for this service.
Procedure for Complaints to Licensee	XXV. Amend Section 58.2 to reflect only the need to document written complaints and not verbal complaints.



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