

Building a Strong and Safe Long-Term Care Home System in Ontario

Proposed *Long-Term Care Homes Act, 2006*

Ministry of Health and Long-Term Care

*Stakeholder Briefing
October 3, 2006*



Highlights

The proposed *Long-Term Care Homes Act, 2006* :

- Will encourage the development of a **culture of community** in homes, strengthen enforcement, and improve accountability;
- Reflects our expectations for the creation of a **resident-centred** system in which people receive the care and support they require;
- **And is based on the fundamental principle** set out in the proposed Act **that:**

“A Long-Term Care Home is the home of its residents and is to be operated so that it is a place where they may live with dignity and in security, safety and comfort.”

Key Accomplishments to Date

- To date, there has been an increase of 3,140 full-time equivalent (FTEs) in the LTC home sector, including an increase of 682 FTE nursing positions;
- As of January 1, 2006, LTC homes began implementing two new standards for skin care and wound management, and for continence care;
- Introduced regulations to ensure 24/7 registered nursing coverage, and to provide a minimum of 2 baths per week for each resident;
- Ensured tougher inspections – as of January 2004, all annual inspections are unannounced;
- Launched a public web-site that provides seniors and families/caregivers with information on individual homes and their record of care;

Key Accomplishments to Date

- Introduced a toll-free Action Line for the public to register complaints or concerns;
- Changed regulations to enable couples who want to live together in LTC homes to do so;
- Funded Resident and Family Councils to improve community engagement and to provide residents and families with a greater voice in the day-to-day life of LTC homes;
- \$42 million to purchase bed lifts for homes.

Commitment to Care

- Formal review by Parliamentary Assistant Monique Smith between January 2004 and March 2004
- Unannounced visits to 25 homes
 - Varied in size, ownership structure, location (urban and rural) and serving specific cultural groups
- Extensive stakeholder consultations with close to 100 groups and individuals active in the LTC community
- My report, *Commitment to Care* was published in June 2004
- Discussion paper released in Fall 2004. More than 700 responses

Background

- The Ministry of Health and Long-Term Care has drafted a proposed new *Long-Term Care Homes Act, 2006 (LTCHA)*. Key program areas addressed include:
 - Residents' rights and safeguards;
 - Service expectations and requirements;
 - Compliance inspection and enforcement;
 - Funding and accountability;
 - System Management (including a licensing scheme).

Key Provisions of the Proposed LTCHA

Preamble

A new **Preamble** highlights key themes including:

- o Commitment to the health and well-being of Ontarians living in long-term care homes now and in the future;
- o Access to LTC Homes that is based on assessed need;
- o Accountability and transparency;
- o Service planning that focuses on resident needs;
- o Responsibility to take action where requirements under the Act are not met.

Residents' Rights, Care and Services

- **Residents' Bill of Rights** expanded and strengthened to enhance enforceability
- Requirement for a **mission statement** for each home that is consistent with the fundamental principle and Residents' Bill of Rights and developed in collaboration with Residents'/Family Councils;

Key Provisions of the Proposed LTCHA

- Requirement for a **plan of care** for each resident setting out all aspects of the resident's care. Staff must collaborate with each other in its development and implementation. Staff who provide direct care must have immediate and convenient access to the plan of care;
- Licensees required to provide current **key services**, including nursing and personal support, restorative care, recreational and social activities, dietary and hydration, medical services, information and referral assistance, religious and spiritual practices and accommodation services. Additional services and service requirements may be added through regulation;
- Requirement for **at least one Registered Nurse** to be on duty and on-site, 24/7;
- Requirement that licensees ensure that there is an **organized volunteer program** including volunteers from community organizations;
- Allows for the establishment of an **Office of the Long-Term Care Homes Resident and Family Adviser** to assist and provide information to residents, their families and others and also advise the Minister on issues concerning the interests of residents.

Key Provisions of the Proposed LTCHA

Strengthened Safeguards include:

- **Protect residents** from abuse and ensure that residents are not neglected;
- Development and implementation of a policy to promote **zero tolerance of abuse and neglect** of residents;
- **Immediate investigation and taking of appropriate action** by the licensee on each suspected, alleged or witnessed incident of abuse or neglect of a resident;
- **Mandatory reporting requirements to the Ministry** of improper or incompetent treatment or care, abuse or neglect of a resident and unlawful conduct any of which results in harm or risk of harm to residents, and misuse or misappropriation of a resident's money or funding provided to a licensee;
- **Whistle-blowing** protection for all persons including staff, residents and volunteers who disclose information to the Director or inspector or give evidence (or may give evidence) in a proceeding or inquest.

Key Provisions of the Proposed LTCHA

- Ministry must **immediately** visit the home if there is information:
 - **Of serious harm or risk of serious harm to a resident** that resulted from:
 - Improper or incompetent treatment or care,
 - Abuse or neglect or,
 - Unlawful conduct.
 - **Of retaliation** or threats to retaliate against a person who has made a report of abuse or neglect or because evidence has been given or may be given in a proceeding or in an inquest.
- **Staff members** who believe they have been **retaliated against** by an employer may have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board (OLRB).

Key Provisions of the Proposed LTCHA

- **To ensure restraints are only used where absolutely necessary, and with appropriate safeguards**, the proposed Act limits the use of restraints as well as personal assistance services devices (PASDs) (such as trays) that limit or inhibit a resident's movement where used as a restraint or to assist a resident with a routine activity of living.
- Provisions dealing with restraining have the following key features:
 - Licensee must have a policy to limit the use of restraints and to ensure that any restraining that is necessary is done in accordance with the Act and regulations;
 - Common law duty to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or others is preserved;
 - When set out in a plan of care as part of treatment, use of a drug as prescribed by a physician is not a restraint ;
 - Resident can be restrained by a drug only under common law duty and if ordered by a physician or other person provided for in the regulations.

Key Provisions of the Proposed LTCHA

Admission of Residents

- Requirements for more **comprehensive and timely assessments** related to the applicant's physical and mental health, current behaviour and behaviour during the year preceding the assessment;
- Expanded requirements for the **provision of information** to applicants about the placement process, choices that applicants have related to the process, and the implications of these choices for applicants;
- Amend the *Health Care Consent Act, 1996* to allow a substitute decision-maker for an incapable person to consent to the person's admission (placement or transfer) to a secure unit of a home with **due process protections** for the person;

Residents' Council and Family Council

- **Mandatory requirement** to establish a **Residents' Council** in each home;
- Requirement to establish a **Family Council** if requested.

Key Provisions of the Proposed LTCHA

Operation of Homes

- **Extensive requirements for orientation and training** for all staff, volunteers and persons who provide direct services to residents on a periodic visitation basis at the home; staff who provide direct care to residents must receive training in a number of areas including palliative care, abuse recognition and prevention, caring for people with dementia, behaviour management and other areas provided for in regulation.
- Licensee shall ensure that all the staff in the home have the **proper skills and qualifications** to perform their duties and **possess the qualifications** provided for in the regulations;
- Requirements that the **Administrator and Director of Nursing and Personal Care work full-time** except in very limited circumstances;
- Where the licensee is a corporation, every director and every officer of the corporation must take all **reasonable care** to ensure that the corporation complies with all requirements under the proposed Act. For Municipal and First Nations Homes approved under Part VIII of the proposed Act, this duty would apply to members of the Committee of Management or Board of Management.

Key Provisions of the Proposed LTCHA

- Licensees must conduct **criminal reference checks** and other screening measures that may be provided for in regulation before hiring new staff or accepting new volunteers (except for persons under 18 years). Licensees will not be required to conduct checks on their existing staff or volunteers;
- Licensees must **limit the use of agency and/or temporary staff** in accordance with the regulations in order to provide a stable and consistent workforce and improve continuity of care;
- Requirement for an **annual resident and family satisfaction survey**. The licensee must act on the results to improve service.

Funding and Accountability

- **Residents shall not be charged** more than the amount provided for in the regulations for all classes of accommodation, including basic accommodation;
- For preferred accommodation, a **written agreement** with the resident is required otherwise only the basic accommodation rate can be charged.
- For anything other than accommodation, the resident can only be **charged if there is a written agreement** with the licensee (e.g. television, telephone);
- Resident **cannot be charged for anything prohibited** in the regulations;
- Regulation-making authority to enable strengthened requirements for management of **resident trust accounts** by licensees.

Key Provisions of the Proposed LTCHA

System Management (includes a licensing scheme)

- Through strengthened **Public Interest Tests** and **Eligibility Requirements**, the Ministry will have better control of where beds are located and who can operate them;
- To safeguard sector balance, **non-profit homes** cannot be transferred to the for-profit sector except in limited circumstances set out in the regulations;
- Issue licences with **fixed terms** that support planning objectives while giving due consideration to the sector's financial investment;
- **Transitional licence terms** for existing homes (except municipal) will be based on each home's structural classification;

Key Provisions of the Proposed LTCHA

- **Temporary licences** can be issued for a fixed term of no more than 5 years;
- After a fixed term licence expires, a home may be granted another fixed term licence. The Ministry must provide **at least three years' notice** prior to the expiry of any fixed term licence as to whether a new licence will be issued or not and under what conditions;
- Director can authorize **temporary additional beds** for a period of not more than 30 days to respond to emergencies;
- Licence **transfers** of beds will require prior Ministry approval and will be subject to all relevant public interest tests, eligibility requirements and conditions imposed by the Ministry;

Key Provisions of the Proposed LTCHA

- Regulation-making authority to ensure adequate **building maintenance**;
- **Public meetings** will be required when deciding whether to issue or transfer licences;

Municipal Homes and First Nations Homes

- Southern municipalities will continue to be required to establish and maintain a LTC home or joint home or help maintain a home or joint home with MOHLTC approval;
- Northern municipalities will be allowed to establish and maintain a home or joint home or help maintain a home or joint home with MOHLTC approval;
- Municipal homes and First Nations homes will be **approved** by MOHLTC; the approval cannot be transferred by the municipality or First Nations nor can it be revoked by the Ministry;
- Where warranted, the director will be able to make orders regarding renovations or alterations to approved homes;
- Ministry will apply the **public interest** test for need when determining if a municipality or the First Nations can operate a new home or increase beds in an existing home;
- **First Nations** may continue to establish LTC homes, as provided in the *Homes for the Aged and Rest Homes Act*. First Nations may also continue to apply for licences to operate a LTC home.

Key Provisions of the Proposed LTCHA

Compliance Inspection and Enforcement

- Homes to be inspected at least **annually** except in circumstances outlined in regulation. These inspections must be unannounced;
- More tools for the Ministry to move in a quick, consistent, transparent and appropriate way, using a **graduated system of sanctions**, including written notification, request for written plan of correction, compliance order, work/activity order, order that funding be returned or withheld and mandatory management order;
- Director may direct the placement co-ordinator to **cease admissions** to a home at any time if there is risk of harm to residents;
- Most serious sanction is **revocation** where the Director makes an order revoking the licence. The Director may also order the home to be operated by an interim manager until the revocation becomes effective.