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## **Government introduces *Long-Term Care Homes Act, 2006***

On October 3, 2006, the Ontario government tabled Bill 140, *The Long-Term Care Homes Act, 2006*, which replaces the *Nursing Homes Act*, the *Charitable Institutions Act* and the *Homes for the Aged and Rest Homes Act*. The Bill establishes a new system of governance for long-term care homes in Ontario. The new Act features tougher penalties for those who violate the Act and whistleblower protection for individuals that report violators. This article will give a brief overview of some of the new legislation's features, with an emphasis on those provisions relating to staff relations.

### *Home – the fundamental principle; Residents' Bill of Rights*

A resident's right to live in a secure, safe and comfortable home with dignity is the fundamental principal that is to be applied when interpreting this Bill. Operators must ensure long term care facilities comply with this principal, in addition to fully respecting and promoting the new Residents' Bill of Rights. Under the Bill of Rights, the operator has an obligation to fully respect and promote the Bill of Rights, as though a contract existed between the operator and the residents. The homes residents may enforce the Bill of Rights against any operator that fails to live up to this 'contractual' obligation. Operators must ensure that the long-term care home is a safe and secure environment for its residents.

### *Duty to protect, zero-tolerance policy*

In addition to promoting a 'zero tolerance' policy towards the abuse and neglect of residents, the operator must ensure a written policy that complies with the regulations is in place to protect residents. The written policy must be communicated to all staff, volunteers, residents, substitute decision-makers, family members and others visiting the long-term care home. The operator must ensure there is compliance with the policy.

### *Complaints procedure*

A written procedure for initiating and dealing with complaints must be developed by operators. The operator must send written complaints about the operation of the long term care home or resident care or the Director appointed by the Minister under the Act. The operator must immediately investigate alleged or suspected incidents of abuse and neglect and take appropriate action in response to the allegations. The operator must provide to the Director a report of the results of his or her investigations and actions taken in response.

### *Duty to report*

Persons who are not residents, but have reasonable grounds to suspect that any of the following has occurred or may occur, must immediately report the matter to the Director:

- Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm.
- Abuse of a resident by anyone or neglect of a resident by the operator or staff that resulted in harm or a risk of harm to the resident.
- Unlawful conduct that resulted in harm or a risk of harm to a resident.
- Misuse or misappropriation of a resident's money.

- Misuse or misappropriation of funding provided to an operator under the Act.

The following persons are guilty of an offence if they fail to make a report:

- The operator or person who manages the home under a management contract.
- An officer or director of the corporation, if the operator who manages the home is a corporation.
- A member of the management committee of a home or joint home or board of management of an approved municipal home or First Nations home.
- A staff member.
- Any person who provides professional services to a resident or the operator in the areas of health, social work or social services work.

The coercion or intimidation of a person into not to make a report, discouraging a person from making a report, or authorizing, permitting or concurring with the contravention of the duty to make a report is an offence for all but the last group of persons listed above.

### *Director's inspections and inquiries*

If the Director receives information that any of the following has occurred the Director must ensure compliance with the requirements under the Act by arranging for an inspector to conduct an inspection or make inquiries:

- Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm.
- Abuse of a resident by anyone or neglect of a resident by the operator or staff that resulted in harm or a risk of harm to the resident.
- Unlawful conduct that resulted in harm or a risk of harm to a resident.
- Misuse or misappropriation of a resident's money.
- Misuse or misappropriation of funding provided to an operator under the Act.
- Retaliation against a whistleblower.
- Failure to comply with a requirement under the Act.

The inspector must visit the long-term care home immediately if the information indicates that there is serious harm or a risk of serious harm to a resident in relation to inquiries about improper or incompetent treatment or care, abuse or neglect, and unlawful conduct. The inspector is also required to visit the home immediately for a report, *inter alia*, of retaliation against a person making a report. For reports relating to other matters, the Director must have an inspector conduct an inspection or make inquiries if the Director has reasonable grounds to believe that there may be a risk of harm to a resident. It is an offence for anyone to attempt to prevent a person from providing information to an inspector or the Director.

### *Whistle-blowing protection*

The Act prohibits retaliation and threats of retaliation against a person for the following actions:

- Disclosing anything to an inspector.
- Disclosing or reporting anything to the Director.
- Advising the Director of a breach of a requirement under the Act or of matters about the care of a resident or operation of a home.
- Giving evidence in a proceeding or a Coroner's inquest.

If a resident takes any of the protected actions mentioned above, the Act specifically prohibits: discharging a resident from the long-term care home, threatening to discharge a resident or discriminatory treatment against a resident. Further, the following persons must not do anything to discourage a person from taking these same actions, and must not do anything to reward a person for failing to take those actions:

- The operator or person who manages the home under a management contract.

- An officer or director of the corporation, if the operator or person who manages the home is a corporation.
- A member of the committee of management of a home or joint home or board of management of an approved municipal home or First Nations home.
- A staff member.

Retaliation and the other prohibited acts mentioned above are offences under the Act. Persons taking the protected actions mentioned above are shielded from legal action, unless they acted in maliciously or in bad faith.

### *Complaint to Ontario Labour Relations Board*

Staff members who believe an employer has retaliated against them may deal with the matter through grievance arbitration under a collective agreement or by filing a complaint with the Ontario Labour Relations Board. Various provisions of the *Labour Relations Act, 1995* apply when a complaint is filed with the Board. In a proceeding before the Board, the employer or person acting on behalf of the employer bears the burden of proof that they did not contravene the whistle blowing provisions of the Act.

Where the Board determines that a staff member has been discharged or disciplined for cause, and their employment contract or collective agreement does not contain a specific penalty for the infraction, the Board may substitute another penalty for the discharge or discipline that they considers just and reasonable.

### *Staffing provisions*

The operator must ensure that all of the home's staff members have the proper skills and qualifications necessary for the staff members to perform their duties and which, are outlined in the regulations. In accordance with the regulations, the operator must ensure that the use of temporary, casual or agency staff is limited in order to provide a stable and consistent workforce and to improve continuity of care to residents. Before hiring staff and accepting volunteers screening measures, including criminal reference checks, must be implemented for those over 18 years of age.

The training and retraining specified in the Act is a requirement for all staff, volunteers and persons who provide direct services to residents on a periodic visitation basis. The operator must ensure that these persons do not perform their responsibilities prior to receiving the specified training. In emergencies or exceptional and unforeseen circumstances a person may perform these duties, but the training must be provided within one week of a person starting to perform their responsibilities.

The areas of training include:

- The Residents' Bill of Rights.
- The home's mission statement.
- The home's policy to promote zero tolerance of abuse and neglect of residents.
- The duty to make mandatory reports.
- The home's policy to minimize the restraining of residents.
- Fire prevention and safety.
- Emergency and evacuation procedures.
- Infection prevention and control.
- Laws and Ministry and operator policies relevant to the person's responsibilities.
- Other areas provided for in the regulations.

The operator must ensure that all staff providing direct care to residents receive additional training in:

- Abuse recognition and prevention.

- Caring for persons with dementia.
- Behaviour management.
- How to minimize the restraining of residents and, where restraining is necessary, how to do it in accordance with the Act and the regulations.
- Palliative care.
- Other areas provided for in the regulations.

The operator must ensure that emergency plans are in place for the long-term care home. As provided for in the regulations, these emergency plans must be tested, evaluated, updated and reviewed with staff and volunteers of the home.

### *Residents' and Family Councils*

The operator must ensure a Residents' Council is established in the home. Members of the Residents' Council may be a resident, and if the resident is mentally incapable one of his or her substitute decision-makers. Staff persons are among those who cannot be members of the Residents' Council.

The Act gives a number of powers to Residents' Councils, including:

- Advising residents respecting the rights and obligations of residents and the operator under the Act.
- Attempting to resolve disputes between the operator and residents.
- Sponsoring and planning activities.
- Collaborating with community groups and volunteers.
- Advising the operator of concerns and recommendations.
- Reporting to the Director any concerns or recommendations.
- Reviewing inspection reports, allocation of funding, financial statements and the operation of the long-term care home.

The operator must respond to concerns or recommendations of the Residents' Council within 10 days.

When a family member of a resident, former resident, or person of importance to a resident or former resident has requested that a Family Council be established the operator must assist in the establishment of the Family Council. As is the case with Residents' Councils, staff persons may not be members.

If there is no Family Council, the operator must advise residents' families and persons of importance to residents of the right to establish a Family Council and must convene quarterly meetings to advise these persons of the right to establish a Family Council. Family Councils are given powers similar to those of the Residents' Councils.

For further information, please contact [Andrew Tremayne](#) at (613) 940-2736.

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