Retirement Homes Regulatory Authority
Risk Officer Report
2017

Deanna L Williams

Introduction

The Retirement Homes Regulatory Authority, RHRA ("the Authority") was established under the *Retirement Homes Act, 2010* ("the Act") and, while independent from government, is subject to government oversight through a written Memorandum of Understanding ("MOU") with the Ministry of Seniors Affairs.

The Authority administers the Act and its regulations and oversees the enforcement of provisions contained within. A key duty of the Authority is to ensure the Fundamental Principle of the Act is upheld:
"The fundamental principle to be applied in the interpretation of this Act and any regulations, order, or other document made under Act, is that a retirement home is to be operated so that it is a place where residents live with dignity, respect, privacy, and autonomy, in security, safety and comfort and [where they] can make informed choices about their care options"

The Authority carries out its legislative and regulatory obligations by ensuring that only retirement homes who meet the licensing criteria in the Act receive and maintain a licence to operate in Ontario. In addition to its licensing role, the RHRA meets its legislative mandate through:
- Informing and educating its licensees, residents, the retirement homes sector and the public about the Act, regulations and its role
- Inspecting retirement homes and overseeing compliance and enforcement of the Act to ensure resident safety and protection

With some exceptions, a *retirement home* is defined in the Act as:
A building, group of buildings or part of a building, with one or more rental units:
- *occupied primarily by persons 65 years of age or older*
- *occupied or intended to be occupied by at least 6 persons who are not related to the operator of the home*
- *where the operator of the home makes available at least two care services (of those identified in the Act), directly or indirectly, to residents*

A retirement home does not include homes/buildings that receive certain government funding or are governed by certain other laws, such as the Homes for Special Care Act, 1990 and the Long-Term Care Homes Act, 2007.

The Risk Officer

The Act requires that an independent, statutory officer- a Risk Officer- be appointed by the Authority and that the appointment be approved by the Minister of Seniors Affairs. The duties of the Risk Officer, who was duly appointed in 2014, are set out in section 24(3) of the Act as follows:
The Risk Officer:
  a) *shall review and assess the effectiveness of the Authority's administration of this Act and the regulations, including the Authority's activities and proposed activities related to ensuring that licensees meet the care standards and safety standards set out in this Act and the regulations, and respect the rights of residents set out in the Act and regulations, and;*
  b) *shall perform the other duties and exercise the other powers that are prescribed, 2010, c11, s 24(3)*

The Risk Officer is appointed by the Board of Directors of the RHRA, in accordance with provisions set out in the Act, the MOU between the RHRA and the Minister responsible for Seniors Affairs, and RHRA's by-law Number 1; she is accountable to and reports to the RHRA Board through its Governance and Regulatory Affairs Committee (GRAC). Notwithstanding these reporting requirements, it is important to note that the Risk Officer role is established as both statutory but also independent- with clear expectations that the Risk Officer is able to carry out her role in an independent manner.

I received confirmation of the Ministerial approval regarding my re-appointment as Risk Officer in mid-March. Accordingly, my work on this report was delayed, commencing in late March 2017.

Scope and Methodology

In accordance with the work plan approved by the Governance Regulatory Affairs Committee (GRAC) in January 2017, my work this year focused on a preliminary review regarding the efficiency and effectiveness of the new Inspection, Compliance and Enforcement (ICE) model, and the Authority's plans for implementation of its Risk Framework. Specifically, I was requested to review these to provide both validation regarding the efficiency and effectiveness of the approaches proposed for

both ICE and the Risk Framework, as well as an independent perspective, including any suggestions or recommendations respecting the same.

My review involved an extensive assessment of information provided through various documents, presentations, and policies related to the proposed approach for the new ICE model and Risk Framework that is being implemented by the Authority over the next several years. In addition, a number of discussions and meetings with RHRA staff, including Srikanth Mangalam, Special Advisor; Paul Pham, Director, Risk and Analytics; Todd Ruston, Manager, Inspections and Ryan McAfee, Manager, Inspections were most informative and helpful in facilitating my review.

Meetings and subsequent discussions with the Registrar and Senior Management team members within the Authority also served to enhance my understanding respecting the current policies and processes approved by the Board and the history that informed them.

Inspections, Compliance and Enforcement Model (I.C.E) and Risk Framework

Introduction

The Retirement Homes Regulatory Authority is a relatively new regulator, established under the Retirement Homes Act, 2010 and having commenced its licensing process in 2012. While the literature would suggest that more than five years of data are needed to fully inform evidence based processes, the Authority has taken the commendable step to begin mining and analyzing the data that it has. Best regulatory practices around the world embrace risk management models which use collected data as a means to track patterns or trends and to identify potential risks of harm in order to effectively mitigate and reduce these. The RHRA demonstrates leadership in its efforts to use the data available now to inform the development and implementation of a new Inspections, Compliance and Enforcement (ICE) Model, based on a Risk Framework supported by evidence-based and risk-informed decision-making- with the goal to positively impact the quality of life and reduce risk of harm for retirement homes residents in Ontario.

It is noted that some elements within the new ICE model align with recommendations or findings arising from the Risk Officer reports of 2014-15 and 2015-16; namely that the Authority collect and use data to determine key patterns to inform evidence based processes going forward and measure the

effectiveness of these; and that better communication and linkages be established with other regulators to facilitate greater collaboration and accountability.

The RHRA's move to use its available data to identify potential harms and trends that promote evidence-based and risk informed approaches to regulatory decision-making represents best practice amongst regulatory authorities in all professions/industries and across all jurisdictions.

<u>The I.C.E Model and Risk Framework</u>

The *Retirement Homes Act, 2010* establishes the fundamental principle, which sets out an expectation that operators of licensed retirement homes in Ontario meet high standards of operation that ensure their residents 'live with dignity, respect, privacy, and autonomy, in security, safety and comfort and [where they] can make informed choices about their care options'. The Authority is established to ensure the retirement home operators meet these expectations, and to take appropriate steps to protect residents when expected standards are not met.

In establishing its initial risk based licensing process in 2011, the Authority identified, in consultation with industry representatives, potential areas of risks against which a home seeking initial licensure would be rated. Each licensed home was subsequently subject to the inspections process, resulting in confirmation of, or a change in, an initially attributed risk level.

Since the inspections process began, retirement homes have been assessed-through scheduled 'routine inspections' or RI's, against twenty inspection criteria which are also referred to as 'critical requirements' or 'areas of assessment'.

RHRA's new Inspection, Compliance and Enforcement (ICE) model- which began implementation in the spring of 2017, involves a risk based decision-making framework that is informed by data which has been gathered through all inspections. The ICE model involves the creation of a risk engine, which is used to help develop a risk score for a retirement home based on the types and significance of non-compliances over a period of time. The significance of these non-compliances is described in terms of how they pose risks of harm to residents of retirement homes. The risk rated homes help RHRA allocate resources efficiently and effectively for compliance support, inspections and enforcement. The analytics generated from the ICE model will help identify sources for greatest

risks of harm, and where they occur; and how the generated data can inform evidence based decision-making for the Authority to most appropriately focus its efforts and resources where there is believed to be potential for greater risk of harm to residents. In using reliable and relevant information it gathers to identify and assess areas of non-compliance; to identify and classify potential risks of harm; and to evaluate steps needed to reduce evidence-informed risks, the Authority is on the right path to meeting its eventual goal of defining and improving residents' quality of life.

The Authority's vision respecting the new risk based Inspections, Compliance and Enforcement (ICE) Model is included in a new Strategic Plan and supported through an accompanying Business Plan, both of which have been approved by the Board. The new ICE model clearly demonstrates the potential to significantly enhance regulatory effectiveness and efficiency. Ensuring resources are in place is important, because enhanced effectiveness is directly dependent on the plan being achieved.

Findings

The efforts that the RHRA has made, and is making to ensure that its inspections are targeted towards actual or potential risks of harm and that inspections yield meaningful data to further inform evidence based decision-making and process improvements going forward, are commendable. The Authority's approach supports the principles of 'right touch' regulation, working to ensure that the efforts and resources of the Authority go into the 'right' things; that data analytics are used to identify areas of non-compliance and risk of harm from observed non-compliance, and to inform evidence-based decision making and processes going forward.

The ICE model, based on a risk framework, is founded on sound principles of building evidence through data collection and analysis and using the information to inform potential areas of risk- and more importantly, to identify those steps needed to reduce harm to residents. The overall goal is to ensure the best decision-making and the most appropriate and effective actions within the inspections, compliance and enforcement model that ultimately promote and improve residents' quality of life.

The directions that the Retirement Homes Regulatory Authority has taken, and is taking towards implementation of the new Inspections, Compliance and

Enforcement (ICE) model and accompanying Risk-Informed Decision-Making Framework (risk based framework) are aligned with and representative of best regulatory practices in Ontario and internationally.

The RHRA's model is built on the analysis and use of data gathered through all inspections. This information will also be used to identify causes (or probable causes) of harms to residents, including those where causes are more difficult to identify. As example, where falls may generally be cited as a key area of potential risk, the reasons for falls may vary and it may not be immediately apparent whether cause is non-compliance at the operation level, or a personal choice of a resident who refuses to use his/her walker. Identified patterns or trends with respect to harms and their probable causes provide valuable insight and information that will guide the Authority's harm reduction strategy and be used to validate the Risk Framework.

The risk based framework being implemented by the RHRA is driven by a comprehensive data analytics process that yields important information respecting compliance and non-compliance; the nature and severity (and risks) of harms and the effectiveness of various measures in mitigating and managing these risks. In contrast to the initial process which subjected all homes to routine inspections on a cyclical basis, the new Inspections, Compliance and Enforcement model (ICE) puts more appropriate emphasis (and resources) into identifying and understanding where non-compliance occurs and their significance and frequency. Emphasis is directed towards the use of supports rather than enforcement to assist homes that seek to be compliant, and employing the full enforcement authority of the RHRA to high(er) risk homes, when it is necessary and appropriate to do so. Wherever appropriate, compliance support will be pursued before enforcement, and such support to a home may continue when enforcement is underway.

Prioritizing resources to those areas of most significant non-compliance and higher risk, and less on homes that are compliant, is an approach that is both reasonable and sound. A key benefit of embracing the identification and categorization of homes on this basis is, in my view, to ensure that the Authority continues to be viewed as an effective and efficient regulatory authority, where its resources and regulatory efforts go into the 'right' things.

The risk-informed decision-making process is in relatively early stages of implementation, having begun with initial steps to measure and manage non-

compliance, using data analytics to characterize and categorize harms. The Risk Framework, when fully operational, will include a number of smaller and overlapping processes, and drive risk informed decision making throughout the RHRA. In the new ICE model, the risk informed strategy will result in a new 'inspection-informed' risk rating of every home.

A further overlapping strategy for evaluation and continuous quality improvement will include an evaluation framework to measure and assess the impacts of risk informed decision-making; assess relationships between identified harms and ratings for risk; support a process for evaluation and reporting of results through public scorecards. RHRA's decision to organize external peer review of the process by an esteemed panel of international experts is a further step in the right direction. The ultimate goal of the Risk Framework and associated strategies is to move from a system focused on harms reduction to one that is focused on improving the quality of life for resident of retirement homes in Ontario.

Concluding Remarks

My sincere thanks to Srikanth Mangalam and Paul Pham with whom I have worked most closely in this review. I am very appreciative of their willingness to assist me throughout my review and for the information and insight that facilitated my work. Early discussion with Todd Ruston and Ryan McAfee also significantly contributed to my understanding and review.

I also thank and acknowledge Bonnie Rose and her team within the Authority, for their responsiveness to my requests for information and assistance, often at short notice. Your ongoing support and assistance, throughout this review, and always- is much appreciated.

It has been an honour and a privilege to serve as the Authority's Risk Officer since 2014.

Deanna L. Williams