ORCA SUBMISSION
RETIREMENT HOMES ACT, 2010 AMENDMENTS
November 2021

Standing Committee on the Legislative Assembly
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Ontario Retirement Communities Association

ABOUT THE ONTARIO RETIREMENT COMMUNITIES ASSOCIATION

ORCA represents over 92 per cent of all licensed retirement community suites in Ontario, employing 30,000 front line workers caring for nearly 60,000 seniors who choose to call retirement communities their home.

Retirement communities are regulated by the *Retirement Homes Act*, 2010 (RHA) and are licensed and inspected by the Retirement Homes Regulatory Authority (RHRA). Each retirement community can offer up to thirteen care services, including but not limited to assistance with dressing, assistance with personal hygiene, medication management and provision of a meal.

Caring for seniors is the most important job of our members and they take that responsibility very seriously. Retirement home operators have worked tirelessly over the past year and a half to put the safety and protection of our seniors first throughout the COVID-19 pandemic.

The Ontario Government has demonstrated its leadership in protecting seniors and our sector is very grateful for the $68.9 million Retirement Home Support Program emergency funding received to date. As of today, 94 per cent of 60,000 seniors living in retirement homes have been and remain free of COVID-19 with more than 99 per cent of residents fully vaccinated.

Retirement homes are private sector businesses. Aside from the special COVID-19 funding and unlike the long-term care sector, retirement homes do not receive public funding. Our sector is 100 per cent funded by the seniors who chose to call retirement living home.

This submission has been prepared on behalf of ORCA's membership.

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EXECUTIVE SUMMARY

ORCA supports the principle of modernizing the *Retirement Homes Act*, 2010 (RHA), particularly if it increases resident choice and well-being and reducing the regulatory and administrative burden on retirement communities thereby decreasing costs to residents.

ORCA believes modernization can lead to better outcomes and a stronger sector if it reflects best regulatory practices, including proportionality, smart use of data, red-tape reduction, innovation, a focus on outcomes, evidence-based decisions, and transparency and stakeholder engagement.

ORCA fully supports all requirements that protects seniors from abuse, including financial abuse. We support the proposed amendment prohibiting the borrowing of money or other property from a resident. As well, operators have a zero-tolerance policy when they become aware of a family member or friend taking financial advantage of or acting abusive (verbally or physically) towards a senior living in its retirement community. As a reminder, the RHA already mandates that retirement homes must have a written policy promoting zero tolerance of abuse and neglect of residents.

Furthermore, ORCA fully supports all efforts to dissuade and penalize unlicensed operators, including the proposed enhanced RHRA powers to require unlicensed homes to either cease operations or apply for a license. These operators damage the good reputation of compliant operators and the sector in general.

This submission highlights ORCA's concerns with respect to two proposed amendments which are overly broad in scope:

1. RHRA Emergency Orders
2. Collection of Residents' Information

ORCA acknowledges the RHA amendments to formalize the retirement home sector's best practice to provide price lists upon requests. This submission also provides background information demonstrating the complexity of pricing and the sector's continued commitment to consumer protection and transparency.

Legislation and regulation should be proportional to the harm it seeks to prevent for a risk-based regulator such as the RHRA. We urge the government use an evidence-based approach to address specific problems caused by outlier operators, rather than implement broad sector-wide compliance requirements and enforcement powers to already fully compliant operators.

COVID-19 OUTCOMES IN RETIREMENT HOMES

Retirement home operators have worked tirelessly to put the safety and protection of our seniors, their families, and staff first, and continue to remain vigilant as Ontario endures the fourth and subsequent waves. This includes implementing stringent infection prevention and control (IPAC) measures, a multitude of new safety protocols along with significant additional staffing, while also managing associated expenses and other additional increases in costs.

A full 94 per cent of the approximately 60,000 seniors living in retirement homes have been and continue to be free of COVID-19. Retirement home residents are more than 99 per cent fully vaccinated, with the vast majority having received booster shot to date.

The RHRA's review of COVID-19 impacts in retirement homes made several key findings when comparing outcomes from the first vs. second wave:

- **Concentrated Problem**: The infection rate in the majority of retirement homes was low and continued to remain low through both waves. More than 80 per cent of homes that had outbreaks had an infection rate of less than 5 per cent (i.e. in a medium-sized home of 100 residents, the outbreak/spread was contained to less than 5 people – resident and/or staff – becoming infected).

- **Outbreak Control and Management**: Despite more homes experiencing an outbreak in the second wave vs. the first wave, homes performed better in outbreak management during the second wave, resulting in fewer resident infections per capita.

- **Business Model**: The business status of a home (for-profit vs. not-for-profit) was not a factor in the risk of an outbreak or its outcomes.

- **Retirement Homes Compared to Long-Term Care**: Fewer outbreaks in retirement homes compared to long-term care homes, and total cases and death rate ratios in retirement homes were quite significantly lower than long-term care:
    - Outbreaks: 53 per cent (retirement homes) v. 82 per cent (long-term care homes) with at least 1 outbreak
    - Resident Cases (per 100): 6 (retirement homes) v. 19.2 (long-term care homes)
    - Resident Deaths (per 100): 1 (retirement homes) v. 5 (long-term care homes)

The six per cent of retirement homes that did experience more significant challenges with COVID-19 outbreaks still had better outcomes than both long-term care homes and hospitals, despite those sectors having received much greater government assistance to address their sector-wide challenges. **During the second and third waves, the retirement home sector fared better than the general population with minimal outbreaks as a result of the strength of the sector's overall outbreak management strategies and IPAC compliance.**

RHRA EMERGENCY ORDERS

The proposed amendments to the RHA would empower the RHRA to serve orders in extraordinary circumstances. However, as currently drafted, the legislation provides no definition of "extraordinary circumstances," with the definition to be set out in regulation. We believe this approach is open for broad interpretation and potential for regulatory overreach not rooted in an evidence-based approach. The RHRA would be the only regulator in the entire province to possess such powers over privately funded business and would, with this change, have more powers than the Ontario Government has over publicly funded hospitals.

Furthermore, we find this proposed change to be redundant given the Ontario Government already has the powers it needs to manage an emergency – pandemic or otherwise – under the *Emergencies Management and Civil Protection Act*, 1990 (EMCPA). The COVID-19 pandemic has demonstrated that these powers indeed already exist.

Throughout the pandemic, ORCA and its members were active and collaborative partners with government and highly compliant with all directives. ORCA facilitated access, communication, essential educational materials and supports to all retirement homes (regardless of membership in ORCA) as well made our extensive information and supports on our COVID-19 portal available to all congregate care settings struggling to understand rapidly changing government and public health directives and policies.

We feel strongly that a third-party regulator, such as the RHRA should not have ongoing, overly broad, and extraordinary emergency powers that are greater and more unchecked than the powers that the government itself has at its disposal – even the government does not have ongoing emergency-type powers.

ORCA also believes giving power to the RHRA Registrar to make a management or compliance order in the absence of significant evidence of sector non-compliance is inconsistent with the nature of a risk-based regulator, of overall regulatory legislation and practice in Ontario and may likely be the subject of a judicial review.

ORCA believes the focus of this legislation should be on strengthening current practices and lessons learned through collaboration, innovation, and more efficient regulation, rather than giving sweeping emergency powers to the Registrar, particularly given the government's ability to respond through the EMPCA and the ability of the Ministry of Health and Chief Medical Officer of Health to make orders under the *Health Protection and Promotion Act*, 1990 where greater expertise in managing these sorts of issues currently exists.

In summary, it is unprecedented and inconsistent with the principles of constitutional and administrative law for the RHRA Registrar to have invasive order-making powers that (a) do not require non-compliance with the Act for their exercise, and (b) require a licensee to take unspecified actions beyond achieving compliance with the Act. There is no place in Ontario for these arbitrary powers. If the legislature requires licensees to comply with requirements, those requirements should be set out in statute, not left to the unconstrained discretion of the RHRA Registrar.

ORCA understands that in emergency circumstances, a regulator must have powers to respond promptly and in the public interest. Instead of giving the Registrar overly broad powers, we believe that with careful wording, the Act can provide the Registrar with the ability to respond to emergency situations while respecting the constitutional principle of proportionality. A less drastic approach would be to expand the scope of management orders that are currently in the Act and build in safeguards to ensure prompt implementation of these orders.

ORCA RECOMMENDATION

To prevent regulatory overreach, ORCA proposes the following amendment:

Remove section 5 of Schedule 3 to Bill 37 in its entirety and amend section 91 of the Act by adding the following subsections:

Management order
91 (1) The Registrar may serve an order on the licensee of a retirement home ordering the licensee to employ or retain, at the licensee's expense, one or more persons acceptable to the Registrar to manage or assist in managing all or some of the operations of the home, if the Registrar believes on reasonable grounds that,

(a) the licensee has contravened a requirement under this Act; and
(b) the licensee cannot or will not properly manage the operations of the home or cannot do so without assistance.

Contravention to be specified
(2) The order must set out the contravention or contraventions on which it is based, with dates and locations if appropriate.

Date
(3) The order may specify a date or the dates by which the licensee shall comply with its requirements. 2010, c. 11, s. 91 (3).

No stay in extraordinary circumstances
(4) An order under subsection (1) is not subject to an application for a stay under subsection 101 (2) of the Act if,

(a) there are extraordinary circumstances, as set out in the regulations, that require immediate action to be taken with respect to the retirement home; and
(b) the Registrar believes on reasonable grounds that the extraordinary circumstances have resulted or may result in harm or a risk of harm to one or more residents.

Order to comply with advice
(5) An order to which subsection (4) applies may require the licensee to comply with the advice, recommendations and instructions of,

(a) a local medical officer of health or designate; or,
(b) a person or persons with expertise in dealing with the extraordinary circumstances giving rise to the order; or
(c) a person or persons employed or retained under subsection (1).

Court order for compliance
(6) If a person fails to comply with a Registrar's order to which subsection (4) applies, the Registrar may, in addition to any other action he or she may take, make an application without notice to a judge of the Superior Court of Justice and, upon application, the court may make any order that the court thinks fit.

COLLECTION OF RESIDENTS' INFORMATION

On behalf of our residents and families, ORCA is vehemently opposed to the overly broad nature of this amendment, empowering the RHRA to collect private resident and/or Substitute Decision Maker (SDM) contact information without any limitations or qualifications. The proposed amendment would empower the RHRA to collect this information, raising serious privacy issues and significant additional administrative burden on retirement homes, given the lack of limitations with respect to the frequency of disclosure.

We believe this is intrusive and increases unnecessary red tape, particularly when the Ontario Government, the RHRA, and local public health authorities have been fully able to communicate to residents and their SDMs throughout this pandemic. Furthermore, our residents pay privately, out of pocket, to live in retirement homes and expect that government will support and respect their privacy as with any other consumer purchasing services from a private business.

We do not consider this level of overreach by a regulator with respect to the collection of contact information to be appropriate. Patients of doctors or nurses do not have their contact information routinely released to their regulators. Similarly, the RHRA should not have a direct mandate to collect resident information without residents having the rights and protections protected as set out in the *Personal Health Information Protection Act*, 2004 or the *Freedom of Information and Protection of Privacy Act*, 1990.

ORCA recognizes that the RHRA might in rare circumstances require the ability to collect resident contact information, for example, if it needs to communicate with residents and the licensee cannot or will not comply with an order to deliver a written communication on behalf of the Authority.

ORCA RECOMMENDATION

To ensure the appropriate use of resident/SDM contact information, ORCA proposes the following amendment:

Remove subsection 13 (1) of Bill 37 in its entirety and amend section 12 of Bill 37 as follows:

Communication on behalf of Authority

108.1 (1) The Authority may require a licensee to deliver a written communication, on behalf of the Authority, to a resident or their substitute decision-maker in the time and manner the Authority may specify.

Contact information

(2) The Authority may collect a resident's or their substitute decision-maker's contact information from either of them or from the licensee of the retirement home if the Registrar is satisfied that the collection is necessary,

(a) to determine whether the licensee has complied with subsection (1), or

(b) to deliver a written communication to a resident or their substitute decision-maker, if the licensee has failed to comply with a Registrar's order directing a licensee to provide written communication to a resident or their substitute decision-maker.

Same, disclosure

(3) If the Authority seeks to collect the contact information from a licensee under section (2), the licensee shall disclose the information to the Authority.

PRICING LISTS

Transparency is a core value of the retirement home sector – the relationship operators have with seniors is a long-term relationship, based in accountability and trust. The proposed amendment to the RHA would require a licensed retirement home to provide a list of accommodation types and care services and their prices to any person upon request, in print or electronic form. This is currently a best practice amongst retirement home operators, as it is in the interest of operators to build a transparent relationship built on trust with potential future residents. We, therefore, fully support the proposed amendment to the Act.

For everyone to fully understand pricing within the sector, ORCA would like to take this opportunity to highlight the pricing transparency practices already in place. Under the current legislative framework, the RHA dictates that residents have the right to know what care services are provided by the retirement home and how much they cost. In order for a given operator to provide an accurate estimate of care costs, a resident must first be assessed for their individual care needs.

The RHA requires that a retirement home (or external care provider such as a home care coordinator) assess a prospective resident and develop a written plan of care based on the assessment. The assessment can be completed up to 30 days prior to admission but must be completed within 14 days of admission. The assessment includes consideration of nine primary area:

1. Continence.
2. Presence of infectious diseases.
3. Risk of falling.
4. Known allergies.
5. Dietary needs including known food restrictions.
6. Cognitive ability.
7. Risk of harm to self and to others.
8. Risk of wandering.
9. Needs related to drugs and other substances

The initial plan of care must be developed within 2 days of admission and a full plan completed within 21 days of admission. Among the plan of care's components, it includes the list of care services that are part of the package of care services the resident is entitled to receive under the residency agreement (i.e. assistance with bathing, dressing, etc.). This plan is critical in determining the pricing for a given resident.

Following this assessment, the Act requires that every resident be given an information package which, among other requirements, includes an itemized list of care services that a resident requires, based on their assessment, along with prices. The *Residential Tenancies Act*, 2006, further specifies that the information package must be provided to a new tenant before they enter into a tenancy agreement.

In other words, **before** a senior becomes a resident in retirement homes, the retirement home operator **must** provide the resident with a Care Home Information Package (CHIP), which enumerates in detail the proposed monthly costs, prior to the resident signing a tenancy agreement.

Once they become a resident, they can select and pay for care services of their choosing with a full understanding of pricing as outlined in the CHIP. If deemed eligible by Home and Community Care, they may also be provided with publicly funded home care. Retirement homes may provide up to 13 care services (and at least two must be provided directly or indirectly by the home to be licensed):

• Assistance with bathing	• Provision of a meal
• Assistance with personal hygiene	• Dementia care program
• Assistance with ambulation	• Assistance with dressing
• Assistance with feeding	• Any pharmacy services from a practicing pharmacist
• Provision of skin and wound care	• Any medical services from a practicing physician
• Continence care	• Any nursing services from a practicing nurse
• Administration of drugs or another substance	

Cost comparisons between retirement homes are difficult for potential residents to make due to numerous variables, particularly related to geography. For example, if comparing a retirement home operator in Toronto against one in Prince Edward County, variables may include construction costs, property tax rates, and development fees. Some retirement homes may offer more services and amenities than others, and corresponding staffing costs may vary significantly. Unlike long-term care homes, in retirement homes, the cost to a given resident will depend on the specific needs, preferences and location of choice for that resident.

CONCLUSION

Retirement homes have remained vigilant and responsive to the needs of seniors throughout the COVID-19 pandemic and our residents have remained 94 per cent COVID-19 free as a result of this great work.

ORCA supports the principle of modernizing the *Retirement Homes Act*, 2010 (RHA), particularly if it increases resident choice and well-being and reducing the regulatory and administrative burden on retirement communities thereby decreasing costs to residents; however, it is important to ground any legislative change in the problems it is trying to solve.

ORCA is concerned that two of the proposed amendments are overly broad in scope and thereby open to wide interpretation. Therefore, we would like to the following amendments to the proposed changes to the Act:

1. **RHRA Emergency Orders**

To prevent regulatory overreach, ORCA proposes the following amendment:

Remove section 5 of Schedule 3 to Bill 37 in its entirety and amend section 91 of the Act by adding the following subsections:

Management order
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manage or assist in managing all or some of the operations of the home, if the Registrar believes on reasonable grounds that,

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No stay in extraordinary circumstances
(4) An order under subsection (1) is not subject to an application for a stay under subsection 101 (2) of the Act if,

(c) there are extraordinary circumstances, as set out in the regulations, that require immediate action to be taken with respect to the retirement home; and
(d) the Registrar believes on reasonable grounds that the extraordinary circumstances have resulted or may result in harm or a risk of harm to one or more residents.

Order to comply with advice
(5) An order to which subsection (4) applies may require the licensee to comply with the advice, recommendations and instructions of,

(d) a local medical officer of health or designate; or,
(e) a person or persons with expertise in dealing with the extraordinary circumstances giving rise to the order; or
(f) a person or persons employed or retained under subsection (1).

Court order for compliance
(6) If a person fails to comply with a Registrar's order to which subsection (4) applies, the Registrar may, in addition to any other action he or she may take, make an application without notice to a judge of the Superior Court of Justice and, upon application, the court may make any order that the court thinks fit.

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Same, disclosure

(3) If the Authority seeks to collect the contact information from a licensee under section (2), the licensee shall disclose the information to the Authority.

We appreciate the opportunity to share with this committee the retirement community sector's pandemic-related outcomes as the government works to modernize the RHA. We fully support the objective of these changes to further protect the health and well-bring of seniors across Ontario.

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