

**Caution:**

*This consultation summary is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposals, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the proposals detailed in the consultation summary are subject to change as a result of the consultation process and as a result of review, editing and correction by the Ministry for Seniors and Accessibility and the Office of Legislative Counsel.*

Consultation Summary of Proposed Amendments to O. Reg. 166/11 under the Retirement Homes Act, 2010 (the “**Act**”) and O. Reg. 75/08 under the Regulatory Modernization Act, 2007 (the “**RMA**”)

**Background:** Bill 37, Providing More Care, Protecting Seniors, and Building More Beds Act, 2021 (“**Bill 37**”), received Royal Assent on December 9, 2021. Bill 37 amends the Act. Some of the amendments came into force on December 9, 2021. Others come into a force on a future date to be proclaimed.

## **Remove Spent Transition Requirements**

*Context* – There are certain transition provisions in the regulation that applied only when the Act first came into force. They are no longer needed.

*Proposed Amendment* – The proposed amendment would remove from the regulation section 4.1 related to the first election of the board of the Retirement Homes Regulatory Authority (the “**RHRA**”) and section 4.2 related to deemed licences when the Act came into force.

## **Licence Application**

*Context* – Section 5 of the regulation lists the documents and information an applicant for a licence to operate a retirement home must submit.

*Proposed Amendment* – The proposed amendment would reorganize section 5 to make it easier for applicants to understand their obligations.

## Removing Spent Language

*Context* – Section 5.1 of the regulation relates to extra expense insurance that licensees must have and includes a reference to maintaining it beginning on January 1, 2014. The regulation also refers to section 114 of the Act, which pertains to the redaction of personal information and personal health information from inspectors' reports and orders made by the Registrar of the RHRA (the "**Registrar**"). Schedule 3 to Bill 37 deleted section 114 in the Act.

*Proposed Amendment* – The proposed amendment would remove the date "January 1, 2014" from subsections 5.1(2) and (2.1) of the regulation. It would also delete the phrase "subject to section 114 of the Act" in subsection 11(1) of the regulation.

## Surrendering Terminated Licence

*Context* – Section 48 of the Act permits the Registrar to terminate a licence in certain circumstances.

*Proposed Amendment* – The proposed amendment would require a person whose licence has been terminated to surrender it to the Registrar immediately after it is terminated.

## Clarifying Training and Information Requirements

*Context* – Section 65 of the Act creates obligations for licensees to train staff and the components of that training. Section 66 of the Act obliges licensees to train volunteers on certain matters.

*Proposed Amendment* – The proposed amendment would eliminate training requirements for certain individuals who are otherwise required to be trained as staff of a retirement home. Specifically, it would remove the obligation for licensees to train a person who works or provides services at the home under a contract or agreement with the licensee or between the licensee and a third party and if the person:

- i. falls under clause (b) or (c) of the definition of "staff" in subsection (2)1 of the Act;
- ii. only provides occasional maintenance or repair services or religious or entertainment services;
- iii. does not provide direct care to residents; and
- iv. is supervised by the licensee in accordance with written supervision policies.

The proposed amendment would retain certain requirements to provide these individuals with information on the home's policy to promote zero tolerance for abuse and neglect of residents, emergency plan and infection prevention and control program.

A related amendment would require licensees to also provide external care providers with information on the licensee's policy to promote zero tolerance for abuse and neglect of residents, emergency plan and infection prevention and control program.

### **Policy to Promote Zero Tolerance of Abuse and Neglect and Prohibition on Borrowing, Receiving or Holding Money**

*Context* – Section 67 of the Act requires that licensees have a policy to promote zero tolerance of abuse and neglect of residents. Section 15 of the regulation establishes requirements for this policy, including contents of it in subsection 15(3) of the regulation

*Proposed Amendment* – Bill 37 amended the Act to allow regulations to be made governing or prohibiting borrowing money or other property from a resident or receiving or holding a resident's money or property. Bill 37 received Royal Assent on December 9, 2021 and this amendment came into force.

There are three related proposed amendments to the regulation. The first amendment would add a new section 57.1 prohibiting licensees, staff, volunteers and external care providers from borrowing, receiving or holding a resident's money or property except in accordance with section 72 of the Act or for the payment of rent, care services or other legitimate charges connected to the retirement home. While there would be an exemption for persons related to the resident, the proposed amendment would provide that if a home's policies or the individual's employment contract prohibits borrowing, receiving or holding a resident's money or other property, then the person would be prohibited from doing so even if related to the resident.

The second amendment would add a requirement to include an explanation of the borrowing, receiving or holding prohibition in the home's policy to promote zero tolerance of abuse and neglect.

The third proposed amendment would add a new subsection to section 15 of the regulation. It would specify that the policy to promote zero tolerance of abuse and neglect does not require that a licensee notify a substitute-decision maker, or any other person specified by the resident, of any alleged, suspected or witnessed instance of abuse or neglect or the results of an investigation if the substitute decision-maker or that person is reasonably believed to be responsible for the alleged abuse or neglect.

### **Food Preparation and Canada Food Guide**

*Context* – Subsection 20(4) of the regulation relates to requirements for training of persons who prepare food in the home.

Clause 40(b) of the regulation relates to the nutritional requirements for meals provided in the homes.

*Proposed Amendment* – The proposed amendment would update the language in subsection 20(4) of the regulation to require that at least one person have a current certificate in food handling training from the local board of health or an agency of the board of health or has recently successfully completed an equivalent food handling training program.

Another proposed amendment to clause 40(b) of the regulation would clarify that meals must meet nutrition requirements consistent with Canada's Food Guide.

## **Emergency Plan Requirements**

*Context* – Section 60 of the Act requires the licensee of a retirement home to have an emergency plan. Certain of the requirements for the plan are included in section 24 of the regulation. Sections 25 and 26 of the regulation differentiate the requirements in homes with more than 10 residents and those with 10 or fewer residents, respectively.

*Proposed Amendment* – The proposed amendment would add a requirement to clause 24(5)(a) of the regulation to require licensees to annually test the plan to respond to epidemics and pandemics.

It would also add a new subsection to section 24 that would allow the licensee to use a stand-in for a resident during a planned evacuation of the home if participating in the planned evacuation may cause harm or a risk of harm to a resident.

The proposed amendment would clarify in sections 25 and 26 of the regulation that it is the *capacity* of the home to accommodate more than 10 residents or 10 or fewer residents that determines what emergency plan requirements pertain to it rather than the actual number of residents in the home.

The proposed amendment would also add a clause to paragraph subsection 25(3) of the regulation to require the inclusion of epidemics and pandemics, in the emergency plan in homes with the capacity for 10 or more residents.

## **Dementia Care Program**

*Context* – Section 41 of the regulation establishes requirements for a dementia care program that a licensee may offer in the home.

*Proposed Amendment* – The proposed amendment would clarify that the requirements for a dementia care program are requirements for a home's dementia care program generally and not the program for a particular resident by deleting the phrase "to a resident of the home" in subsection 41(1) of the regulation.

## **Extraordinary Circumstances for New Registrar's Orders**

*Context* – Bill 37 amended the Act to add a new section 92.1, which allows the Registrar to issue two new orders. The Registrar may issue either order in extraordinary circumstances that require immediate action and that have resulted or may result in harm or a risk of harm to a resident of the home. The existence of an extraordinary circumstance that requires immediate action to be taken with respect to the home is one of two conditions that must be met for either order to be issued; the other condition is the presence of a harm or risk of harm to one or more residents. A related amendment to the Act added the authority to make regulations specifying the list of extraordinary circumstances.

These amendments to the Act are not yet in force and require complementary amendments to the regulation, including the list of extraordinary circumstances.

*Proposed Amendment* – With Bill 37 passed, the proposed amendment would add a list of extraordinary circumstances to the regulation. The list would prescribe the following as extraordinary circumstances for purposes of subsection 92.1 of the Act:

- i. acts of God, including extreme weather events or other natural disaster;
- ii. severe flooding;
- iii. staff shortages;
- iv. strikes or lock-outs;
- v. shortages of critical supplies or interruptions of essential services, including with respect to food, heat, water and electricity;
- vi. fires, explosions or chemical or other spills or hazards;
- vii. acts of terrorism;
- viii. criminal acts;
- ix. major failures or destruction of critical physical, technological, or cloud-based infrastructure, including failures caused by ransomware or cyber attacks; and
- x. infectious disease outbreaks, including epidemics or pandemics.

## **Requesting Information from Retirement Homes**

*Context* – Section 108 of the Act permits the Registrar to request information from licensees of retirement homes. The information the Registrar can request is limited to the care services available in the home, clinical and functional profiles of residents, and

the licensee's operation of the home and compliance with the Act. Bill 37 amended the Act to include authority to make regulations to enable the Registrar to also be able to request other information from licensees.

*Proposed Amendment* – The proposed amendment to the regulation would allow the Registrar to collect de-identified information on infection prevention and control measures in a retirement home, including active infection case counts in the home and immunization data.

## **Notice of Certain Events**

*Context* - Section 63 of the regulation requires licensees to give the Registrar notice of certain events. Section 63 does not require licensees to notify the Registrar following a temporary closing of the home or unplanned evacuation.

*Proposed Amendment* – The proposed amendment would amend section 63 of the regulation to require licensees to notify the Registrar as soon as possible after any of the following events occur:

1. a temporary closure of the home or part of the home;
2. unplanned evacuations of residents from the home exceeding six (6) hours;  
and
3. temporary relocation of the home or part of the home.

## **Disclosure of Information**

*Context* – Subsection 113(3) of the Act requires the RHRA to maintain confidentiality of information it obtains while administering the Act except in the circumstances listed in that subsection and in the regulation.

*Proposed Amendment* – The proposed amendment would add a new subsection to the regulation. It would allow the RHRA to share certain information with:

- i. a ministry, department, agency or administrative authority of a government engaged in the administration of legislation similar to the RHA or legislation that protects consumers;
- ii. the chief medical officer of health, a medical officer of health or the Minister, all as defined in the *Health Protection and Promotion Act*;

- iii. the fire marshal, the fire chief of a fire department or the clerk of a municipality, all within the meaning of the *Fire Protection and Prevention Act, 1997*;
- iv. an entity or organization engaged in the protection of consumers in Ontario if the purpose of the communication is consumer protection;
- v. the governing body of a profession regulated under Ontario legislation; and
- vi. an entity or organization that provides or facilitates the provision of a care service, if the purpose of the communication is public health and safety.

### **Emergency Fund**

*Context* – Section 27 of the Act establishes the emergency fund that the RHRA must maintain. Section 64.1 of the regulation relates to the administration of the fund by the RHRA. Section 64.2 of the regulation governs claims made against the fund.

*Proposed Amendment* – The proposed amendment would add a new subsection to section 64.1 of the regulation permitting the RHRA to invest any money in the emergency fund that is surplus to its immediate requirements in any instrument that a trustee can invest in under the *Trustee Act*. It would also clarify clause 64.2(1)(c) and add a new subsection to clarify that the individual and the operator have an obligation to take reasonable steps to mitigate additional costs incurred by a resident to obtain alternate accommodation.

### **Designations under O. Reg. 75/08 of the *Regulatory Modernization Act, 2007***

*Context* - The RMA permits the Lieutenant Governor in Council to designate legislation for the purposes of certain sections of the RMA related to information sharing, publishing specified information, and authorizations to exercise functions under multiple pieces of legislation. The Act is not currently designated under the RMA for any of these purposes.

*Proposed Amendment* – The Ministry is proposing to amend O. Reg. 75/08 to designate the Act for the purposes of sections 7, 10 and 14 of the RMA. The designation under section 7 of the RMA would allow the Minister for Seniors and Accessibility to designate the RHRA to collect and use information that was collected under the authority of another piece of legislation and disclose information that it has obtained under its authority in the Act.

The designation under section 10 of the RMA would designate the Act as legislation under which the Minister for Seniors and Accessibility may publish types of information outlined in subsection 10(4) of the RMA.

The designation under section 14 of the RMA would allow the Minister for Seniors and Accessibility to agree with another minister to authorize someone in the Act (i.e. an inspector or investigator) to exercise some power that is in a piece of legislation for which that other minister is responsible.