Submission to the Minister Responsible for Seniors (Ontario Seniors' Secretariat) with respect to Proposed Initial Draft Regulations made under the *Retirement Homes Act, 2010*

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ADVOCACY CENTRE FOR THE ELDERLY

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INTRODUCTION TO ACE

ACE is a specialty community legal clinic funded by Legal Aid Ontario that was established to provide a range of legal services to low income seniors in Ontario. The legal services include individual and group client advice and representation, public legal education, community development, and law reform activities. ACE has been operating since 1984 and is the first and oldest legal clinic in Canada with a specific expertise in legal issues of the older population.

ACE receives, on average, over 2,500 client intake inquiries a year. These calls are primarily from the Greater Toronto Area but approximately twenty per cent are from outside this region. The individual client services are in areas of law that have a particular impact on older adults. These include, but are not limited to: capacity, substitute decision-making and health care consent; end-of-life care; supportive housing and retirement home tenancies; long-term care homes; patients' rights in hospitals; and elder abuse.

Clients regularly seek our advice on issues relating to accommodation and care in retirement homes. ACE also receives many requests for assistance from community legal clinics and others across Ontario for recommendations on legal approaches to "care home" cases under the *Residential Tenancies Act*, 2006, S.O. 2006 c. 17 (*RTA*).

ACE has also been involved in several high profile inquests. For example, following the deaths of eight people by fire at the Meadowcroft Retirement Home in 1995, ACE represented one of the interveners, the Alzheimer's Society. The coroner's jury made a total of 53 recommendations, including changes to the *Fire Code* to require sprinkler retrofits of all residential care buildings with more than eight residents across Ontario.

In addition to producing written educational materials in the form of brochures and newsletters, ACE has written a text in excess of 600 pages that is now in its third edition entitled *Long-Term Care Facilities in Ontario: The Advocate's Manual*. In addition to material about long-term care homes, this manual includes chapters on retirement homes, home care, substitute decision-making, powers of attorney and advocacy. ACE is planning to publish a fourth edition in 2012.

Additionally, ACE lawyers are in high demand as speakers on seniors' issues and residents' rights. Numerous presentations on these issues have been made by ACE at the local, provincial, national and international levels. We are pleased to contribute our views on retirement home regulation to the Minister Responsible for Seniors (Minister)

and the Ontario Seniors' Secretariat (OSS). We would ask the OSS to also refer back to the submissions ACE made to the Standing Committee on Social Policy regarding Bill 21, *Retirement Homes Act, 2010*, S.O. 2010, c. 11(*RHA*) in May of 2010. Some of the comments and recommendations we made in those submissions are applicable to the proposed initial draft regulations that have been released for review.

Given ACE's experience over the years working on legal and policy issues that impact older adults in Ontario and across Canada, we trust that our submissions to the OSS will be of assistance and urge the Government of Ontario to consider our analysis and recommendations.

We welcome the opportunity for further dialogue on any points we have raised in our submission and our recommendations to the proposed regulations.

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OVERVIEW

It is important for the Government of Ontario to recognize that **tenants of retirement homes[1] are a potentially vulnerable group**. They are often dependent on the institution that provides their care and shelter, in addition to the fact that they are "out of sight" and sheltered from public scrutiny. Moreover, it appears that the care levels provided in retirement homes have increased due to demand and lack of available beds in long-term care homes.

For a number of retirement home tenants, they do not choose to live in retirement homes. They end up in retirement homes because they have care needs that public home care cannot accommodate, such as the need for access to on-site supervision or oversight on a continual basis. The periodic services available through the Community Care Access Centres (CCAC) are not sufficient. Often these tenants don't have family or friends to assist them. They are poor or low income and cannot afford additional private care in their own home. They do not have the care needs to be able to access long-term care. The care need levels for eligibility for supportive housing has also increased to such a degree that many seniors needing services may no longer qualify for supportive housing. While ACE is definitely not saying that all tenants at retirement homes are vulnerable, many are.

We would also ask the OSS to take into consideration in drafting the regulations **that retirement homes are TENANCIES, defined as "care home" in the *Residential Tenancies Act* and will continue to be so governed after proclamation of the Retirement Homes Act..** The proposed initial draft regulations as well as the *RHA* create inconsistent language with respect to the *Residential Tenancies Act*. It is ACE's position that retirement homes residents of retirement homes are, in fact, "tenants" and similarly licensees/operators of retirement homes are "landlords". In preparing our submissions to the draft regulations we have highlighted the tenancy aspect of this relationship wherever possible to emphasize this crucial point.

Although there are a range of care services that retirement homes offer to residents, they are not long-term care homes. ACE submits that retirement homes should not be providing the same level of care and/or services long-term care homes. One of the reasons being that retirement homes will not be regulated by the Ministry of Health and Long-Term Care and will not have to meet the strict standards and guidelines that long-term care homes do. Regulation retirement homes by the Retirement Homes Regulatory Authority (Authority) will not be to the same extent or standards**.**

[1] In this submission, we will refer to this form of accommodation as a "retirement home" although it is defined and governed by Part IX of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 as a "care home."

ACE continues to take the position that retirement homes that offer a level of care services that are the same as or greater than in long-term care homes should be held to the same standards and regulations as long-term care homes.

We are pleased provide to the Minister and the OSS our submissions with respect to the proposed initial draft regulations. Where possible, we have recommended alternate wording for particular provisions and for ease of reference, emphasis has been added to our proposed wording.

DRAFT REGULATIONS –Time to Comment on Draft Regulations after Release of Future Phase(s) of the Proposed Regulations

The Minister and the OSS released the proposed initial draft regulations to the *RHA, 2010*, on February 22, 2011. The Minister is required to post the draft regulations for at least thirty (30) days and consider comments and submissions from the public before the regulations can be finalized. We have been advised from the Seniors Secretariat that the draft regulations which have been released and on which we are providing comment is only the first phase of the regulations and that a future release of draft regulations will include regulations for the emergency fund, administrative monetary penalties, insurance requirements for retirement homes, confinement and transitional matters. **This set of draft regulations on which we are providing comment is therefore not the complete set of draft regulations**.

It is our submission that because the proposed regulations have not been released in their entirety, this poses a challenge to our being able to provide submissions and recommendations that are complete at this time.

Therefore, ACE requests that the Minister allow for further submissions and comments from the public on the regulations to the *Retirement Homes Act, 2010*, once they have been released in their entirety. Specifically, we request that the following provision be added:

> **The proposed initial draft regulations released by the Minister Responsible for Seniors on behalf of the Government of Ontario for public consultation on February 22, 2011, will be open to further amendments upon receipt of the comments and submissions from the public following the full release of the proposed regulations to the *Retirement Homes Act, 2010*.**

DEFINITIONS FOR THE ACT

Section 1 - Abuse

This section sets out the definitions of "abuse" in subsection 2(1) of the *RHA*. We note that the definitions for "emotional abuse", "financial abuse", "physical abuse", "sexual abuse" and "verbal abuse", set out in the proposed regulations are exactly the same as those set out in the *Long-term Care Homes Act, 2007*, Ontario Regulation 79/10 (*LTCHA*, O. Reg. 79/10).

ACE proposes that following amendments to this section are necessary in order that certain responsive behaviours that residents who suffer from Alzheimer's and/or dementia may engage in are not subsequently categorized as "abuse" resulting in potential legal or other implications. We have concerns about retirement homes taking excessive and inappropriate action against residents who suffer from Alzheimer's and/or dementia due to behaviours that may be symptoms of their condition.

Recommendation 1: Amend subsection (c) in the definition of "physical abuse" to read as follows:

> (c) the use of physical force by a resident that causes physical injury to another resident **where the resident using physical force understands and appreciates its consequences .**

Recommendation 1.1: ACE submits that subsection 1(2) should be removed. It is our submission that any use of physical force by anyone other than a resident that causes physical injury or pain should not be exempt from the definition of "physical abuse" simply because it is done so in the course of providing care or assisting a resident with the activities of daily living. Unlike in long-term care homes where there will be some certainty as to the staffing requirements and ratios, retirement homes will not be held to the same standards.

Staff in a retirement home may not be under the direct supervision of a member of a College as defined in the *Regulated Health Professions Act, 1991*, (*RHPA*) at all times. We are concerned about non-registered staff in retirement homes having inadequate training to assess what constitutes "excessive force in the circumstances" as presently stated at subsection 1(2). For the protection of residents who may potentially be very vulnerable, we recommend the removal of subsection (2).

Recommendation 1.2: With respect to subsection 1(3), we recommend the addition of the following provision:

> (3) For the purposes of the definition of "sexual abuse" in subsection (1), sexual abuse does not include:
>
> > **(c) any non-consensual touching, behaviour or remarks of a sexual nature or sexual exploitation directed by one resident towards another resident, a licensee or staff member where the resident engaging in the aforementioned behaviour does not understand nor does he/she appreciate the consequences of the behaviour.**

Subsection 3(1) - Arbitrary Determination of the Number of Residents

Subsection 3(1) of the proposed regulations defines a "retirement home" as being a residential complex or part of a residential complex that is occupied or intended to be occupied by at least six persons who are not related to the operator in order to meet the definition of "retirement home" under the proposed regulations. ACE submits the decision that requirement that a retirement home must be occupied by at least six residents is arbitrary and creates a potential gap with respect the regulation of retirement homes in Ontario. We have concerns that some unscrupulous retirement home operators may avoid regulation by, for example, operating multiple homes with five or fewer residents.

Residents living in homes with fewer than six persons should be afforded the same protections as those with six or more residents. If a home is operating as a retirement home and providing care services to its residents, then it should be subject to the *RHA* and regulations regardless of the number of residents who live there.

Many of the smaller homes with fewer than six residents are located in rural or small urban areas and provide services to Ontario's most marginalized populations. Some of the court cases concerning assault or neglect of seniors (some of which resulted in death) have involved operators of smaller homes. It is our submission that the requirement that a residential complex or part of the residential complex has to occupied or be intended to be occupied by at least six persons in order to meet the definition of a "retirement home" is arbitrary and without basis. ACE believes that the number of residents required in the proposed definition of a "retirement home" should be decreased to two. If this recommendation is rejected and the number remains at a number greater than two, ACE recommends that the regulation be amended to include multiple dwellings housing less than the regulated minimum number but operated by the same operator within the same community.

Subsection 3(1) - Not Being Related to the Operator

Requiring that the residents of a retirement home to not be related to the operator of the home, creates yet another opportunity for unscrupulous operators to avoid regulation. For example, if only one of the residents is related to the operator but the remaining residents are not, this may mean that the home will not meet the definition of a "retirement home" as per subsection 3(1) of the proposed regulations and therefore will not fall under the jurisdiction of the *RHA*.

It is our submission that regardless of any familial relationship between a resident and an operator, if an operator of a retirement home is providing care services to residents for compensation then the home should fall under the jurisdiction of the *RHA* and regulations. Further, if a family member is receiving compensation to provide accommodation and care services then the regulatory system should equally apply to that situation. In our experience, elder abuse and neglect can occur in family situations and not just in relationships with strangers (i.e. tenancy in retirement home).

Recommendation 3: Amend subsection 3(1) of the proposed regulations to take out the words "who are not related to the operator of the home" so that it reads:

> (1) For the purposes of clause (b) of the definition of "retirement home" in subsection 2(1) of the Act, a residential complex or the part of a residential complex that is a retirement home must be occupied or intended to be occupied **by at least two persons**.

DEFINTIONS FOR THIS REGULATION

Section 4 – Definitions

Subsection 44(2) of the *RHA* suggests that different classes of licence relating to the provision of types of care services are possible if the regulations provide for this. ACE submits that the proposed regulations as they are currently drafted do not prescribe classes of licence but in fact, they should**. Classes of licence are important where some homes may be offering more extensive and complex health care services to residents such as a dementia care program. In these circumstances, the retirement homes providing such services should fall under a different class of licence where they are required to meet further standards as set out by the Authority.**

We submit that the issuing of different classes of licence and the establishing of standards for care services by the Authority would ensure that the necessary safeguards required for offering such complex health care services are in place and that such services are monitored so that public can be confident in the regulatory scheme. The definitions of these different classes of licence should be included in section 4. We defer to the Minister and the OSS to determine what these classes should be and how they should be defined in the proposed regulations.

Section 4 of the proposed regulations currently provides definitions for the terms "altered skin integrity" and "drug" but does not go further to define any other terms of relevance or importance found in the proposed regulations. ACE submits that additional definitions for terms in the proposed regulations should be included in this section as well to provide further clarity.

Retirement homes are not long-term care homes and will not be regulated to the same extent. For this reason, we believe that if a retirement home is offering care services such as a "dementia care program" and/or a "skin and wound care program", the proposed regulations to the *RHA* should clearly define the parameters under which retirement homes can offer such programs. ACE submits that definitions should be included in section 4 for "dementia care program" and also, "skin and wound care program" – clearly setting out the parameters of these programs and, in the event that a retirement home is offering such services what exactly this means. The regulations should limit the scope of the care services a retirement home is able to provide to residents.

There should be clear language in the regulations with respect to how such programs will be developed and by whom; the implementation of these programs; their scope and how they will be monitored and/or supervised. ACE defers to the Minister with respect to the exact wording of the definitions. We submit that the Authority should be setting the standards for all retirement homes that are offering such programs to ensure quality control and afford protection to vulnerable residents.

In addition, ACE submits that section 4 should include definitions for the following terms and phrases, all of which are defined in the *LTCHA* O. Reg. 79/10:

- Adverse drug reaction
- Controlled substance
- Food service worker
- Regulated health profession
- Responsive behaviours

Recommendation 4: ACE recommends the creation of different classes of licence relating to the provision of types of care services as provided for at subsection 44(2) of

the *RHA* and that the definitions for these different classes of licence should be included in section 4 of the proposed regulations.

Recommendation 4.1: ACE recommends that section 4 should define and further clarify the terms "dementia care program" and "skin and wound care program" as found in the proposed regulations.

Recommendation 4.2: ACE recommends further amendments to section 4 to include definitions for the following terms and these definitions should be the same as those found in the *LTCHA* O. Reg. 79/10, adverse drug reaction; controlled substance; food service worker; regulated health profession; responsive behaviours.

OPERATION OF A RETIREMENT HOME

Section 5 - Application for licence

Subsection 5(2) sets out the documents and information that an applicant for a licence must provide to the Registrar of the Authority; including evidence satisfactory to the Registrar of all the information that the Registrar includes in the registers established under subsection 106(1) of the *RHA*. Subsection 5(3) provides for additional documents and information that an applicant for a licence must provide to the Registrar. ACE submits that in addition to the documents mentioned in subsections 5(3)(a) and (b), applicants should also provide financial information such as audited financial statements to the Registrar as part of the application process.

Subsection 5(4) states that an application for a licence shall include payment of the application fee set by the Authority. It does not go further to clarify whether one fee will be applicable for all applicants or whether the Authority will have separate classes of fees or graduated fees. ACE submits that given the broad range of care services that retirement homes operating within the province of Ontario offer, the proposed regulations should provide for graduated licences or separate classes of licences dependent upon what types of care services a home purports to offer.

Alternatively, if graduated and/or separate classes of licences are not going to be prescribed in the proposed regulations, then ACE submits that there should financial assistance provided to smaller, not-for-profit run retirement homes with respect to the application fees they will need to pay to obtain a licence.

As well, smaller retirement homes providing services to low-income residents in Ontario should not be required to pay the same licensing fees as larger, for-profit retirement homes as this will pose an undue hardship on these smaller operators and

subsequently on the more marginalized and vulnerable tenants that they house (i.e. if the operator choosing the pass costs of paying the licensing fee onto the residents).
Recommendation 5: Amend subsection 5(3) to include an additional subsection (c) requiring an applicant for a licence to provide information in the form of audited and/or up to date financial information to the Registrar.

Recommendation 5.1: Amend subsection 5(4) to read as follows:

> (4) An application for a licence shall include payment of the application fee set by the Authority that is in effect on the date the applicant makes the application. **The Authority shall determine the amount of the application fee based on an assessment of the information provided by an applicant for a licence as required in subsections (2) and (3) above, and any further relevant information that will assist the Authority in their assessment.**

Section 6 – Reduction in care services

As per section 6 of the proposed regulations, retirement homes shall deliver, at least 90 days before the reduction in care services takes effect, written notice directly to each resident and give notice to the resident's substitute decision-makers, if any. ACE is concerned about residents not receiving sufficient enough notice to allow them to make the necessary arrangements for alternative services. As such, ACE submits that the timeframe that a licensee of a retirement home is to deliver written notice by should be extended to at least 120 days, if not longer.

In many instances, the care services that a resident is receiving from a retirement home are essential and it would pose an undue hardship on a resident if he/she is not given enough time to make alternative arrangements for service provision. ACE submits that given the difficult situation a resident would be put in should he/she not be made aware that there is to be reduction in care services, licensees should be required to deliver written notice of the service reduction to resident and/or their substitute decision-makers by a verifiable means of delivery. ACE submits that section 6 of the proposed regulations should also clearly state what must be included in the written notice informing a resident of a reduction in care services.

In addition to delivering written notice to the resident and his/her substitute decision-makers (where applicable), the licensee should be required to notify the Authority of any anticipated reduction of care services prior to the reduction taking effect. Notice should be given to the Authority at least 120 days before the reduction in care services takes effect as well.

Recommendation 6: Amend section 6 of the proposed regulations to read:

> 6.(1) For the purposes of subsection 44(1) of the Act, the licensee of a retirement home shall, at least **120 days before** the reduction in care services takes effect, deliver the written notice mentioned in clause 44(1)(a) of the Act directly **by a verifiable means of delivery** to each resident and give notice to the resident's substitute decision-makers where the resident is incapable.
>
> **(2) The licensee of a retirement home shall, at least 120 days before the reduction of care services takes effect, provide notice to the Registrar of the same; and**
>
> ***(*3) Written notice as mentioned in subsection (1) above shall include the following information:**
>
> **(a) the reasons for the reduction in care services;**
> **(b) a summary of the care needs of the residents and a summary of the care services that will be reduced; and**
> **(c) a list of alternate external care providers that may be available to meet the needs of the residents who will be affected by the reduction in care services.**

Section 7 - Ceasing to operate a retirement home

ACE submits that the Authority should issue an order against a licensee for the failure to provide a transition plan by the specified date as required in section 7 of the proposed regulations. The order or penalty may be financial but ACE submits that if such is the case, the provision should prohibit the licensee from passing on any fines to the residents.

We believe that the decision on the part of a licensee to cease operating a home as a retirement home will have serious implications for residents of the home and in many cases it may be difficult to secure alternate housing to meet the specific and perhaps complex needs of the residents. ACE submits that section 7 of the proposed regulations need to be amended to allow for as much notice as possible to residents where a licensee intends to cease operating as a retirement home, but also requiring retirement homes to provide transition plans to the Registrar sooner rather than later. Where a licensee fails to provide for a smooth transition for a resident, we submit that the Authority should step in.

Recommendation 7: Amend subsection 7(1) to read as follows:

> (1) For the purposes of section 49 of the Act, the licensee of a retirement home shall give the Registrar the transition plan mentioned in clause 49(1)(a) of the Act to the Registrar at least **180 days** before the home ceases to be operated as a retirement home.

Recommendation 7.1: Amend subsection 7(2)(f) to read:

> (2)(f) a summary of the care needs of the residents and a summary of care services that the licensee provides to the residents **prepared in accordance and upon review of all current information and care plans for the residents receiving care services from the retirement home.**

Recommendation 7.2: The transition plan should include a description of how the licensee will deal with any money the residents have entrusted to the licensee. ACE submits that subsection 7(2)(j) should be amended to read:

> (2)(j) **a complete accounting of any monies that residents have entrusted to the licensee** and a description of how the licensee will deal with any money that the residents have entrusted to the licensee;

Recommendation 7.3: ACE submits that aside from just including a declaration in subsection 7(2)(l) of the proposed regulations that the licensee will comply with clause 49(1)(d) of the Act, the licensee should be required to include in the transition plan filed with the Registrar the actual information provided to the resident or a description of the actions taken to find appropriate alternate accommodation and/or to facilitate the access to or contacting of any external care services that a resident needs. We recommend subsection 7(2)(l) be amended to:

> (2)(l) a declaration by the licensee that the licensee will comply with clause 49(1)(d) of the Act, **including a description of any steps taken by the licensee to find appropriate alternate accommodation for the resident or to facilitate the resident's access to any external care providers that the resident needs;**

Recommendation 7.4: Amend subsection 7(3) to require the licensee of a retirement home to deliver, **by a verifiable means of deliver, at least 180 days** before a retirement home ceases to be operated as a retirement home, written notice to each resident and the resident's substitute decision-makers, **where the resident is incapable**. Such written notice should include the following:

(a) the reasons as to why the home is ceasing to operate as a retirement home;
(b) Information with respect to alternate accommodation and external care providers in order to facilitate appropriate alternatives to meet the needs of residents who are going to continue to reside in the home despite the fact that it will cease to operate as a retirement home; and
(c) Information with respect to the assistance the licensee can provide to residents to help them find appropriate alternate accommodation.

RESIDENTS' RIGHTS

Section 8 – Copies of agreements to residents

Section 8 of the proposed regulations requires that a licensee provide a resident and a resident's substitute decision-makers, if any, copies of the resident's plan of care and a copy of each written agreement between the licensee and the resident. The nature of the written agreements between the licensee and the resident, however, is such that they may cover both property as well as personal care issues. Further, a resident's plan of care is a confidential and personal health document that contains sensitive information that a resident may not want their substitute decision-maker to have access to if the resident is capable. Where a resident may have someone assisting them with their finances, it may very well be the case that the resident does not want the same individual to have access to the resident's plan of care either.

Based on these complicated and interconnected privacy issues, we submit that there needs to be greater clarity with respect to how the copies of written agreements and the plan of care are to be provided and to whom.

ACE submits that the wording in this section should clearly set out specific timeframes by which a licensee should provide to a resident or a resident's substitute decision-makers copies of any written agreements and the plan of care. Further, it is our position that written agreements between the licensee and the resident as well as the resident's care plan should not be automatically provided to the resident's substitute decision-makers unless the resident is incapable or the resident consents and so directs.

Section 8 does not set clear enough timeframes and states only "as soon as possible" after an agreement is made or the plan of care is developed as being when a licensee is

supposed to provide these key documents. It is our opinion that there is no reason why the agreement and the plan of care must be provided at the same time.

Recommendation 8: Delete the current wording in section 8 of the proposed regulations and replace with the following:

> **Copies of agreements to residents:**
>
> **8. For the purposes of informing residents of their rights set out in the Residents' Bill of Rights, the licensee of a retirement shall provide to each resident of the home and to anyone else designated by the resident and where the resident is incapable, to the resident's substitute decision-makers, the resident's plan of care and a copy of each written agreement between the licensee and the resident,**
>
> **(a) immediately after the agreement is made between the licensee and the resident;**
> **(b) within 21 days after the resident commences residency; and**
> **(c) whenever the resident or any of the resident's substitute decision-makers, where the resident is incapable, requests a copy.**

Section 9 – Agreement before resident commences residency

ACE agrees for the most part with section 9 of the proposed regulations setting out what needs to be in the agreement prior to a resident commencing their tenancy (residency) at a retirement home. In addition to the statements required under subsection 9(b) and (c) of the proposed regulations, however, ACE submits that a notice should also be included in the agreement with respect to sections 68 to 71 of the Act which cover the following: restraints prohibited, permitted confinement, notice requirements, access to a rights adviser and other related issues. As confinement is a very important issue that could greatly impact a resident's decision to enter into a tenancy agreement (a requirement under the *Residential Tenancies Act*) with a retirement home, we believe that this information should be included in the agreement before a resident commences his or her tenancy (residency).

In addition, we submit that the agreement between the licensee and the resident should also contain a statement that the licensee has provided the Care Homes Information Package (CHIP) that a licensee is required to provide to a resident under the *RTA*.

Recommendation 9: Include an additional subsections between (c) and (d), providing notice to residents of the fact that restraints are prohibited under the *RHA* except under the common law and also, notice to the residents of the sections of the *RHA* that address confinement to a secure unit of the home.

Recommendation 9.1: Include an additional provision in subsection 9 to read:

> (**e) under the heading "*Residential Tenancies Act, 2006* Provisions" or the equivalent of that heading in the language if the agreement if the agreement is not in English, a statement from the licensee that the Care Homes Information Package (CHIP) with the information stipulated at section 47 of the *Residential Tenancies Act, 2006* Ontario 516/06 has been provided to the resident.**

Section 11 – Posted information

We submit that as retirement homes are tenancies, the proposed regulations should require contact information for the Landlord and Tenant Board to be posted in an area at the retirement home that is accessible and of which all residents are aware.

Further, as there may be some circumstances in which retirement homes will propose that residents should be confined to a secured unit, ACE submits that contact information for the rights adviser should also be required to be posted in an area of the home that is accessible and of which all residents are aware.

Recommendation 11: The information that a licensee of a retirement home is required to post shall include contact information for the Landlord and Tenant Board and contact information for the Rights Adviser.

Recommendation 11.1: Section 11 of the proposed regulations should make it clear that the information is to be posted in a location that all residents are aware of and the posted information should be easily accessible.

Section 13 – Hiring staff and volunteers

There is no comparable section in the proposed *RHA* regulations to section 47 of the *LTCHA*, O. Reg. 79/10, which specifies the qualifications of personal support workers hired by licensees under that legislation to provide personal support services. ACE submits that a similar provision to section 47 of the *LTCHA* O. Reg. 79/10, should be

included in the proposed *RHA* regulations with respect to the hiring of staff and volunteers beyond the requirements of section 13 of the proposed regulations.

Further, we submit that where a licensee is hiring staff to provide direct care to residents, they should be required to keep staff records as per section 234 of the *LTCHA*, O. Reg. 79/10. Where a licensee is providing care services indirectly through arranging them via a third party provider, the licensee should review the credentials of the third party service provider and their staff as well as keep records of the same.

Recommendation 13: Include an additional provision similar to section 47 of the *LTCHA*, O. Reg. 79/10, setting out the qualifications required of personal support workers or of other staff directly employed by the licensee or contracted to provide care services at a retirement home.

Recommendation 13.1: Include a provision in the proposed regulations requiring a licensee to retain staff records. The wording of this provision should be the same or comparable to that found at section 234 of the *LTCHA*, O. Reg. 79/10 79/10.

Recommendation 13.2: Include a provision in the proposed regulations that requires licensees who arrange for a third party to provide care services at a retirement home to review the credentials of the contract staff and the third party service provider/company keep records of the information reviewed.

Section 14 – Staff training

ACE submits that given that staff providing care services at retirement homes are often working with older adults who may have varying degrees of vulnerability and complex care needs, there should be no delay in staff receiving the necessary training to provide direct care services to clients.

Where one of the care services that a retirement home offers is a dementia care program, ACE submits that there should be specialized training for staff providing services through such a program and that this training should be delivered by someone who has expertise in dementia and care of older adults. The training for retirement homes providing dementia care programs should be approved by the Authority as per evidence-based practice or prevailing standards.

Recommendation 14: Amend subsection 14(3) to read as follows:

(3) For the purposes of paragraph 5 of subsection 65(5) of the Act, every licensee of a retirement home shall ensure that every staff member who provides a care service to a resident has received or receives training in,

(a) ways to encourage mental stimulation in residents, ways to provide mental stimulation to residents and the positive effects of encouraging and providing such mental stimulation;
(b) each care service offered in the home, and especially the care services that are relevant to the staff member's duties in the home; and
(c) **where one of the care services offered and to be provided is a dementia care program, specialized training in providing care to clients with dementia and working with older adults, as determined by the Authority.**

Recommendation 14.1: Amend subsection 14(4) of the proposed regulations by removing the words "…as soon as possible and, in any event, no later than six months from the later of the day this section comes into force and the day the person becomes a staff member at the home" and replace with: "***no later than 21 days from the later of the day this section comes into force and the day the person becomes a staff member at the home***."

Section 15 – Policy of zero tolerance of abuse and neglect

Section 15 of the proposed regulation sets out the requirements that a retirement home must have with respect to a policy of zero tolerance of abuse and neglect. We submit that amendments should be made to this section to strengthen the protection of residents. For example, we recommend that for the purpose of consistency, effectiveness and ensuring procedural fairness, all programs for preventing abuse and neglect should meet certain standards to be set by the authority and that section 15 of the proposed regulations should state as such.

To further reinforce the protection of residents against potential abuse and neglect, ACE submits that a provision should be included in section 15 to require the licensee of a retirement home to include as part of their program to promote zero tolerance of abuse and neglect including information on elder abuse and on third party agencies who are available to provide support to any resident who experiences abuse and neglect.

It is our position that section 15, as it is currently drafted, does not go far enough to describe exactly what the "procedures and interventions" or "strategies" [see

subsections 15(3)(a) to (c)] are that a licensee will be required to take in order to ensure that residents are protected from abuse and/or neglect. If the regulations to the *RHA* are not going to specify what these "procedures and interventions" and "strategies" are, then we submit that it should be left to the Authority to set the standards that a retirement home must meet with respect to any policy regarding zero tolerance of abuse and neglect or any procedure dealing with the same issues.

In the event that an incident of abuse and/or neglect is discovered by a licensee of the retirement home, ACE submits that the proposed regulations should require that the licensee ensure that the person(s) alleged to have committed the abuse and/or neglect is no longer allowed to work with the complainant or "victim" while an investigation is taking place. Further, that any staff alleged to have committed abuse and/or neglect should only be allowed to work under supervision during the course of an investigation.

Recommendation 15: Add to section 15 of the proposed regulations that any program for preventing abuse and neglect; procedures for investigating and responding to alleged, suspected or witnessed abuse and neglect; and policy to promote zero tolerance of abuse and neglect of residents must meet standards set by the Authority.

Recommendation 15.1: Amend subsection 15(3)(a) to read:

> 15(3)(a) contain procedures and interventions to assist and support residents who have been abused or neglected or allegedly abused or neglected, **including the provision of relevant information available concerning elder abuse either developed by the licensee or by a third party;**

Recommendation 15.2: Include in section 15 of the proposed regulations protections for residents who are "victims"/complainants; including ensuring that once a complaint is made that persons who are alleged to have abused or neglected a resident are no longer allowed to work with that resident during the investigation and/or that they are only permitted to work during the course of the investigation under supervision.

Recommendation 15.3: Amend subsection 15(3)(d)(i) by removing the words "**...that has resulted in a physical injury or pain to a resident or that causes distress to a resident that could potentially be detrimental to a resident's health or well-being**".

Recommendation 15.4: Amend subsection 15(3)(d)(ii) by removing the word **"witnessed"**.

Recommendation 15.5: Amend subsection 15(3)(g)(v) to require that the written record that is prepared is provided to the Authority at least once every calendar year for review.

STANDARDS FOR RETIREMENT HOMES

Section 16 – Temperature control
Section 17 – Cleanliness
Section 18 – Pest control
Section 19 – Maintenance

With respect to sections 16 to 19 of the proposed regulations, ACE submits that where it states that a licensee of a retirement home "shall ensure that timely action" is taken, whether it be with respect to extreme temperature changes in the home or pests, that instead of the words "timely action" a clear timeframe should be stated by which the licensee should address these concerns. In some circumstances, residents in a retirement home may be particularly vulnerable to extreme temperature changes in a home due to health related issues. Therefore, we believe that clearer timeframes are necessary to ensure that action is taken immediately in these situations.

In terms of cleanliness standards at retirement homes, one of the complaints we have heard from residents is that there are instances where operators are not providing custodial/cleaning staff with adequate cleaning and other supplies (i.e. toilet paper) to ensure that common areas are kept clean. ACE submits that subsection 17 of the proposed regulations should not only state that every licensee should ensure that common areas are clean and sanitary but that licensees should ensure that there is an adequate supply of cleaning and sanitary products made available at all times.

Recommendation 16: Amend subsection 16(3) to read:

> Every licensee of a retirement home shall ensure that action is taken **as soon as reasonably possible, but no later than forty-eight (48) hours** to deal with extreme temperature changes in the home.

Recommendation 17: ACE recommends that in addition to what is stated in the proposed regulations at subsection 17(1), reference should be made to a licensee being required to ensure that adequate supplies, such as cleaning and sanitary supplies, are provided to custodial/cleaning staff to ensure that common areas are clean and sanitary at all times. As well, licensees should ensure that common areas, such as public bathrooms, at the home are adequately stocked with supplies (i.e. toilet paper, paper towels, etc.)

Recommendation 18: Amend subsection 18(3) in the proposed regulations to read:

> The licensee shall ensure that action is taken **as soon as reasonably possible, but no later than forty-eight (48) hours,** to deal with pests in the retirement home.

Section 20 – Food Preparation

Where retirement homes are offering, as one of their care services, the provision of meals, it is important that they adhere to the necessary standards and safeguards with respect to the handling, preparing and transporting of food. This is particularly important where some residents in retirement homes may have compromised immune systems and be particularly susceptible to food poisoning.

Upon comparison of the proposed regulations to the *RHA* with respect to food preparations and those in the *LTCHA* O. Reg. 79/10, it is clear that the requirements are not as stringent. ACE submits, however, that given the potential vulnerability of residents in terms of health, the proposed regulations should have stricter safety standards when it comes to food handling; including requiring more than just one person involved in preparing food to have a current certificate in food handling training either from public health or an equivalent program.

It is our submission that all staff involved in food preparation, including but not limited to anyone in a supervisory capacity, should have a current certificate in food handling from the local public health unit. Further, it is our opinion that for those homes that offer provision of meals as a care services, staff involved in food preparation should be required to take a refresher course in food handling at least annually.

Recommendation 20: Amend subsection 20(4) of the proposed regulations to read:

> The licensee shall ensure that whenever food is prepared in the retirement home, **all persons involved in preparing the food, including but not limited to any staff person in a supervisory capacity,** hold current certificates in food handling from the local public health unit or has **within the last three (3) months** successfully completed a food handling training program equivalent to that offered by public health units.

Recommendation 20.1: We recommend the inclusion of an additional provision to section 20 of the proposed regulations:

> **20(5) The licensee shall ensure that every staff member involved in preparing food receives ongoing training in food handling at least annually after receiving the training referred to in subsection (4)**.

Section 23 – Safety Standards

The wording in section 23 of the proposed regulations is exactly the same as the wording found at section 112 of the *LTCHA*, O. Reg. 79/10. The heading for the latter, however, is **"Prohibited devices that limit movement"**. For reasons of safety, the devices listed at section 23 of the proposed *RHA* regulations shall not be used in a retirement home. We submit, however, that the proposed regulations should also make it clear that these same devices should not be used in a retirement home because they limit movement and are contrary to section 68 of the *RHA* prohibiting restraints except in accordance with the common law.

Recommendation 23: We recommend that the exact wording found in section 23 be replicated at a later point in the proposed regulations (i.e. somewhere between sections 52 to 54) to reflect the true nature of the devices listed in this section; making it abundantly clear that they are "Prohibited devices that limit movement". See our further recommendation below.

Section 24 – Behaviour management

ACE submits that the inclusion of a provision such as section 24 in the proposed regulations is inappropriate as the relationship between a resident and a licensee of a retirement home is a tenancy. In other landlord/tenant relationships where the tenant does not live in a retirement home, landlords are not required to have a "behaviour management strategy" to respond to any tenant issues. Rather, any potential conflict with or between tenants is addressed by the *RTA* and regulations. Under the *RTA*, should a landlord be concerned that a tenant is interfering with the reasonable enjoyment of anyone else the landlord has the recourse of making an application to the Landlord and Tenant Board. The same can be said for retirement homes. Therefore, it is our submission that section 24 is inappropriate should be removed from the proposed regulations as it gives a landlord (licensee) too much authority to "manage" tenants that they deem to be "difficult" in the name of "behaviour management."

ACE understands, of course, that in some retirement homes may house residents who have Alzheimer's and/or dementia but may not yet required the degree of care offered by a long-term care home. If this is indeed the reason why section 24 has been included in the proposed regulations, to address how to deal with the responsive behaviours of any tenants/residents who suffer from Alzheimer's and/or dementia, the development

and implementation of a written behaviour management strategy by the licensee should be done in consultation with a member of a regulatory health college with expertise in how to manage responsive behaviours.

We have serious concerns regarding section 24 of the proposed regulations. It is our position that licensees of retirement homes should not be developing and implementing a behaviour management strategy that will include, as stated in subsection 24(1)(a), techniques to prevent and address resident behaviours that pose a risk to the resident or others in the home, such as confining the resident to a secured unit. ACE submits that licensees, who are in fact really landlords, should not be given such powers under the proposed regulations. In no circumstances should licensees/landlords be given any authority to restrain or confine residents/tenants in the name of "behaviour management".

Section 24 in the proposed regulations is particularly problematic where one of the care services a retirement home offers is the provision of a dementia care program. If this is the case, ACE submits that possible strategies for interventions to prevent and address resident behaviours that pose a risk to the resident or others in the home should only be implemented by an individual who is involved in the development and implementation of the home's dementia care program; has the necessary training in dementia and/or is under the direct supervision of the individual who developed and/or implemented the program.

ACE submits that if the requirement that a home must develop and implement a written behaviour management strategy remains in the proposed regulations, then in addition to the wording in section 24, additional provisions such as those found in the *LTCHA* Ontario Reg. 79/10 relating to responsive behaviours; altercations and other interactions; behaviours and altercations must be included in the *RHA* regulations.

Recommendation 24: In addition to section 24 in the proposed regulations, ACE recommends that additional sections be added with wording that is the same or comparable to that found at sections 53, 54 and 55 of the *Long-Term Care Homes Act*, Ontario Regulation 79/10, relating to "Responsive behaviours", "Altercations and other interactions between residents", and "Behaviours and altercations", respectively.

SAFETY PLANS

Sections 25 – Emergency plan, general

There are specific requirements set out in the *Fire Protection and Prevention Act, 1997* and section 25 makes reference to the fact that retirement homes must fulfil their obligations under this legislation at subsection (3). It is our opinion, however, that the proposed regulations should make reference to the fact that there needs to be testing on an annual basis of the emergency plan, including arrangements with community agencies, partner facilities and resources that will be involved in responding to an emergency related to a fire.

Recommendation 25: Amend subsection 25(5)(a) to include an additional provision:

(v) fire

Section 26 – Emergency plan, retirement home with more than 10 residents
Section 27 – Emergency plan, retirement home with 10 or fewer residents

Sections 26 and 27 of the proposed regulations suggest that there should be differences in the emergency plans for retirement homes with more than ten residents versus those with ten or fewer residents. ACE disagrees with these sections as they are currently drafted. They have the effect of creating different safety standards depending on the number of residents occupying a retirement home. We take the position that should be no difference requirements for an emergency plan regardless of how many residents live in a retirement home.

It is our submission that the standards of emergency planning for retirement homes should be the same regardless of how many residents live there. Further, it is our experience that some of the smaller homes are located in rural and more remote areas; thus making it harder for emergency services such as the local fire department to reach these retirement homes in the event of a fire. Although these homes may house fewer residents, the emergency planning required may be challenging for different reasons. Most homes, regardless of the number of residents will likely have some residents who have physical and/or cognitive limitations that may impact on their ability to evacuate quickly during an emergency.

Recommendation 26: Amending the heading for section 26 in the proposed regulations to read "***Emergency plan, retirement home***"**;** specifically removing the qualifier with respect to the number of residents and deleting section 27.

STANDARDS FOR CARE SERVICES PROVIDED BY REGULATED HEALTH PROFESSIONALS

Section 29 – Certificate of registration required

ACE submits that this section should be moved so that it precedes section 13 or follows section 14.

STANDARDS RELATING TO THE ADMINISTRATION OF DRUGS OR OTHER SUBSTANCES

Section 30 – Administration of drugs or other substances

Under the *LTCHA* O. Reg. 79/10, personal support workers are not allowed to administer drugs to residents of a long-term care home with the exception of topical medications and only under the supervision of a member of the registered nursing staff (see section 131). While it would be impractical in a retirement home where one of the care services being provided is administration of a drug or other substance to have only registered staff administer medications and substances, ACE submits that there should be comparable safeguards in place in the proposed regulations to the *RHA* when it comes to the administration, storage, disposal, ordering, and counting of drugs or other substances. In some cases, retirement home staff could be administering controlled substances to residents making it even more imperative that there are standards relating to the administration of drug or other substances that are the same or comparable to the provisions in the *LTCHA* O. Reg. 79/10.

Licensees should be required to develop and implement proper procedures on the administering of drugs and other substances that clearly set out the limitations on what staff at a retirement home who are not members of a College as defined in the *Regulated Health Professions Act, 1991*, S.O. 1991 c. 18. (*RHPA*) are able to do. For example, there should be a statement in the proposed regulations that makes reference to the section in the *RHPA, 1991*, that requires the performing of those controlled acts only by members of a College under the that legislation.

As a further safeguard, we submit that the required training described at subsections 30(c) and 30(e)(i) and (ii) of the proposed regulations, should be delivered by a member of a College as defined in the *Regulated Health Professions Act, 1991*; preferably a member of the College of Nurses of Ontario.

Recommendation 30: Amend subsection 30(a) of the proposed regulations to read:

> (a) no drug is administered by the licensee or the staff to the resident in the home unless the drug has been prescribed for the resident by a person who is authorized to prescribe a drug under section 27 of the Regulated Health Professions Act, 1991, **and only in accordance with all the requirements of the same section of the *RHPA***.

Recommendation 30.1: ACE recommends amending subsection 30(c) of the proposed regulations to read:

> (c) neither the licensee nor a staff member administers a drug to a resident in the home unless the licensee or the staff member has received training in the procedures applicable to the administration of the drug from **a member of a College, as defined in the *Regulated Health Professions Act, 1991*,**

Recommendation 30.2: Amend subsection 30(d) to include the word "directly":

> (d) a member of a College, as defined in the *Regulated Health Professions Act, 1991*, **directly** supervises the administration of the drug or other substance to the resident in the home;

Recommendation 30.3: Amend subsection 30(e) to include an additional provision:

> (e) if the licensee or a staff member is involved in the administration of the drug or other substance at the home, that the licensee or staff member is trained in,
>
> (i) ways of reducing the incidence of infectious disease, including maintaining proper hand hygiene;
> (ii) the safe disposal of syringes and other sharps; and
> **(iii) such training as described in subsections (i) and (ii) above are to be delivered by a member of a College, as defined in the *Regulated Health Professions Act, 1991*.**

Recommendation 30.3: Add subsection 30(g):

> **(g) Subsections (c), (d) and (e) are not required in the event that the staff member or licensee administering a drug or other substance to a resident holds a current Certificate of Registration and is a member of a College, as defined in the *Regulated Health Professions Act, 1991*.**

Section 31 – Storage of drugs or other substances

If drugs or other substances are stored in a retirement home on behalf of a resident, beyond the requirements listed at section 21of proposed regulations, we submit that it is important that residents be advised at all times as to which staff person(s) in the home have access to the locked and secure area and/or medication cart where the medications and substances are stored. This is of particular importance where there is an emergency situation and a resident needs access to his/her medications quickly.

With respect to controlled substances [subsection 31(b)], it is our submission that there needs to be further protections in the regulations to ensure the security of the drug supply. For this reason, we suggest that an additional provision with the same or comparable wording to subsection 130(3) of the *LTCHA* O. Reg. 79/10, addressing the security of the drug supply should be added.

Recommendation 31: Amend subsection 31(1)(a) of the proposed regulations to include an additional provision that states that at all times residents should be advised of who (i.e. licensee, staff on site) has access to the locked and secure area and/or medication cart where the drugs or other substances are stored. For security reasons, we submit that the number individuals who have access to this locked area should be limited per each shift.

Recommendation 31.1: Include a provision after section 31 that reads:

> **Security of drug supply**
>
> **32. Every licensee of a retirement home shall ensure that steps are taken to ensure the security of the drug supply, including the following:**
>
> 1. **All areas where drugs are stored shall be kept locked at all times, when not in use.**
> 2. **Access to these areas shall be restricted to,**
>   - i. **persons in a supervisory capacity during each shift who administer drugs in the home; and**
>   - ii. **the licensee.**
>
> 3. **A monthly audit shall be undertaken of the daily count sheets of controlled substances to determine if there are any discrepancies and that immediate action is taken if any discrepancies are discovered.**

Section 32 – Medication management system

ACE submits that the proposed medication management system described at section 32 of the proposed regulations does not provide enough safeguards with respect to the ordering, storage, dispensing, disposal and handling of medications in a retirement home. Subsection 32(1) of the proposed regulations requires the licensee to establish a medication management system. The development of such a medication management system, we submit, should be done either in consultation with or by a member of a College, as defined in the *Regulated Health Professions Act, 1991*. We recommend that the proposed regulations be amended to reflect such a requirement.

We submit that the medication management system to be developed requires that all medications stored in a retirement home on behalf of a resident must be securely stored and clearly and accurately labelled. In particular, the licensee should be required to make available to staff who administer a drug or other substance relevant information with respect to who prescribed the medication for the resident, including the resident's primary or attending physician; the name pharmacist who filled the prescription(s) and the contact information of the pharmacy. This information is crucial in the event there is an adverse drug reaction or a medication error (i.e. wrong dosage).

If the administration of a drug or other substance by staff at a retirement home involves the administering of controlled substances as defined in the *Controlled Drugs and Substances Act* (Canada), and storage of the same, we submit that the medication management system should require counts of all controlled substances by a member of a College defined in the *RHPA*, at regular intervals and/or in accordance with prevailing practices of other facilities that store controlled substances on behalf of residents/clients. The licensee of a retirement home offering administration of a drug or other substance as a care service should be required to have daily count sheets for controlled substances and monthly audits of the count sheets.

Recommendation 32: ACE recommends that if one of the care services that a retirement home provides is the administration of a drug or other substance, then the retirement home should be subject to the same standards and regulations as those required of long-term care homes as per sections 122 to 136 of the *LTCHA* O. Reg. 79/10. We submit that there should be provisions in the proposed regulations to the *RHA* with the same or comparable language to sections 122 to 136 of the *LTCHA* O. Reg. 79/10, where applicable.

Recommendation 32.1: We recommend that daily count sheets for controlled substances should be audited on a monthly basis and in the event that there are any discrepancies, immediate action is taken and any discrepancies should be reported to

the Registrar. Further, we submit that on an annual basis information with respect to the monthly audits of controlled substances should be submitted to the Registrar.

Section 33 – Records

Where a retirement home provides as one of its care services the administration of a drug or other substance, we submit that the licensee should be required to keep records beyond those stated at section 33 of the proposed regulations. In addition to written medication administration records, ACE submits that licensees should also be required to keep count sheets for all controlled substances stored on behalf of a resident at the retirement home and that these count sheets should be audited on a monthly basis and detailed records with respect to the ordering, receiving, disposal and destruction of any drugs should also be kept by the licensee.

Recommendation 33: Include as part of subsection 33(a) the requirement that the person who administered the drug or other substance should initial the written record each time a drug or other substance is administered to a resident.

Recommendation 33.1: Add the following additional subsection after 33(a):

> **A record is kept by the retirement home of the original signatures and initials of any member of the staff who are involved in the administration of a drug or other substance to residents at home; and**

Recommendation 33.1: Amend section 33 of the proposed regulations to include a requirement that the licensee shall ensure that daily counts of all controlled substances as defined in the *Controlled Drugs and Substances Act*, take place and all information is recorded on count sheets that are kept at the retirement home and audited on a monthly basis.

Section 34 – Medication error

Section 34 of the proposed regulations is not comprehensive enough and does not afford adequate protection to residents. Medication errors, incidents and adverse drug reactions are very serious. Given that residents of retirement homes may have medical conditions of varying degrees of seriousness, we submit that where a retirement home offers the administration of a drug or other substance as a care service, strict safety standards and protections must be in place to respond to any potential medication errors effectively and efficiently.

ACE submits that any retirement home providing care services such as the administration of drugs or other substances, including controlled substances should be held to the same standards as long-term care homes.

Recommendation 34: Amend section 34 of the proposed regulations to include language that is the same or comparable to that found at section 135 of the *LTCHA* O. Reg. 79/10. Specifically, we submit that a licensee of a retirement home should be required to undertake a quarterly review of all medication errors, incidents and adverse reactions to a drug or other substance.

Recommendation 34.1: We recommend that the written record described at subsection 34(2) of the proposed regulations and/or the results of the quarterly review should be submitted to the Registrar on an annual basis. Where the medication error, incident and/or adverse reaction to a drug or other substance results in serious injury to a resident and/or the loss of a life, however, the information should be reported to the Registrar immediately.

Recommendation 34.2: We recommend removing the words "**to the extent that the following persons are known to the licensee**" at subsection 34(2)(b). Where a retirement home is offering administration of a drug or other substance as a care service, the licensee should be required to keep up to date records concerning who prescribed the drug or substance and their contact information; the resident's attending physician or nurse practitioner; and any person who provides pharmacy services to the resident. Any error or reaction should be reported to these individuals immediately.

STANDARDS RELATING TO OTHER CARE SERVICES

Section 41 – Provision of a meal

Recommendation 41: Amend subsection 41(b) to read:

> (b) Menus provide adequate nutrients, fibre and energy for the resident, include fresh seasonal foods **each day from all food groups in keeping with Canada's Food Guide as it exists from time to time and are consistent with current standards of good nutrition in Canada;**

Recommendation 41.1: Amend subsection (d) to indicate that menu cycle changes at least every "14 days" and that they are developed in consultation with the residents who are receiving this care service.

Recommendations 41.2: We recommend amending subsection 41(k) to read:

(k) staff and volunteers hold and transport perishable hot and cold food safely **at temperatures deemed safe by the relevant food handling and safety programs**"

Recommendation 41.3: If one of the care services provided by a retirement home is "assistance with feeding" as listed in the *RHA*, we submit that an additional provision should be included in the regulations that states:

> **Assistance with feeding**
>
> **If one of the care services that the licensee or the staff of a retirement home provide to a resident of the home is the assistance with feeding, the licensee shall ensure that,**
>
> **(a) no staff simultaneously assists more than two residents who need extra assistance with feeding; and**
> (b) **no resident who requires assistance with eating or drinking is served a meal until someone is available to provide the assistance required by the resident.**

Section 42 – Dementia care program

The proposed regulations, as they are currently drafted, do not provide for different classes of licenses based the nature and extent of care services that a retirement home provides. Section 44(2) of the *RHA* states:

> *If the regulations prescribe classes of licence relating to the provision of types of care services, a licensee holding a licence of a specific class in respect of a retirement home shall not make available to the residents of the home more, fewer or different care services than the types of care services authorized for that class of licence.*

ACE submits that the proposed regulations should be amended to prescribe classes of licence based on types of care services provided. Some retirement homes provide care services to residents that are more complex than those offered at other homes and, as such, should be in a different licence class and be required to adhere to particular and possibly higher standards. For example, retirement homes that offer as one their care services the provision of a dementia care program should be required to hold a class of licence that requires that they demonstrate that the dementia care program they offer meets the criteria which we suggest should be determined by the Authority for all retirement homes offering this type of service.

As they are currently drafted, subsection 42(3) of the proposed regulations requires that a dementia care program provided by a retirement home "…shall be developed and implemented in accordance with evidence-based practices and, if there are none, in accordance with prevailing practices." We submit that the language in subsection 42(3) is vague and beyond what it states that any such program should not only be supervised by a member of a College, as defined in the *Regulated Health Professions Act, 1991*, but also developed and implemented by a member of the same with specific training and expertise in dementia care and care of older adults.

Where the proposed regulations say that the program should be "supervised" we submit that this should be clarified as well so that it is understood that a dementia care program must be "directly supervised" by a member of a College, as defined in the *RHPA*. The proposed regulations should provide as much clarity as possible with respect to what such a program will entail or, in the alternative, they should state that the details and criteria for a dementia care program should be set by the Authority.

Further, we submit that the results and/or written record of the annual evaluations of a dementia care program to be done by a licensee should be submitted to the Registrar for review to ensure that a retirement home's dementia program meets both the necessary standards and the needs of the residents who participate in the program.

Recommendation 42: Amend subsection 42(3):

> The program shall be developed and implemented **by a member of a College, as defined in the *Regulated Health Professions Act, 1991*, with specific training in dementia care and care of older adults,** in accordance with evidence-based practices and, if there are none, in accordance with prevailing practices

Recommendation 42.1: We recommend the following change to subsection 42(4):

> The program shall be **directly** supervised by a member of a College, as defined in the *Regulated Health Professions Act, 1991*, with specific training in dementia care and care of older adults.

Recommendation 42.2: Amend subsection 42(5) to read:

> The program shall be evaluated at least annually and the licensee shall keep a written record of each evaluation **to be submitted to the Registrar at least annually.**

ASSESSMENT OF CARE NEEDS

Section 44 – Initial assessment of care needs
Section 45 – Full assessment of care needs
Section 46 – Exception, initial assessment
Section 47 – Exception, full assessment

With respect to the above noted sections of the proposed regulations concerning assessment of care needs, ACE submits that it is unclear who has the responsibility for conducting these assessments and whether licensees will be required to designate certain individuals to conduct these assessments within the retirement home. Residents whose care needs may include dementia care; skin and wound care; or a personal assistance services device as per subsection 45(3) of the proposed regulations will be required have a full assessment to be conducted by a member of a College, as defined in the *RHPA*. ACE submits that the proposed regulations are unclear with respect to who will be responsible for paying for the range of assessments required under sections 44 to 47. If residents or prospective residents are required to pay out-of-pocket to have these medical assessments done by physicians or registered nursing staff, this could pose an undue financial hardship on some seniors who are living on a fixed income.

Further, we have some concerns that assessment of the care needs of all prospective residents will be conducted where it may not be necessary to do so. Given the broad range of prospective tenants who are consider living in a retirement home, it is our submission that in some cases prospective tenants/residents will be fully functional with very minor health issues; therefore not requiring any extensive care services. In these circumstances, a prospective resident/tenant should be exempted from undergoing an assessment if he/she can provide current medical information (i.e. letter from family or attending physician) establishing that the resident/ tenant does not need extensive care services and that there are no issues with respect to cognitive ability and/or functional capacity.

In addition to the matters listed in subsection 44(2) and 45(2) of the proposed regulations, we submit that the assessment of care needs should also involve assessing the cultural and/or religious preferences of a proposed resident/tenant, including but not limited to any dietary or other restrictions based on cultural and/or religious beliefs. Such an assessment is essential in ensuring that a retirement home is not only meeting the requirements set out in the *RHA* and regulations, but also those set out by the *Ontario Human Rights Code*. These inquiries should be made at the assessment stage as well as when developing the plan of care.

PLAN OF CARE

Section 48 – Development of plan of care

Section 48 of the proposed regulations sets out the requirements for developing a plan of care for each prospective resident; including timeframes and information that must considered. Where an assessment of the resident's care needs indicates that he/or may require dementia care, skin and wound care or the use of personal assistance services devices that the licensee shall ensure that an interdisciplinary care conference is held as part of the development of the resident's plan of care and that the plan of care takes into account the results of the care conference [subsection 48(5)].

We submit that the regulations should include more information about the "interdisciplinary care conference" and who is invited to participate. It should also clearly state in section 48 that the resident, or his/her substitute decision maker where the resident is incapable, must be included in the interdisciplinary care conference and provide any relevant information with respect to the resident's care needs. This respects that fact that the health care providers are required by law in the *Health Care Consent Act* to obtain an informed consent to any plan of care from the resident if capable, or his or her substitute decision maker if the resident is not capable.

Recommendation 48: Add an additional provision to subsection 48(4):

> **Was developed with the involvement of the resident, any other persons designated by the resident, and/or the resident's substitute decision-maker, where the resident is incapable.**

Section 48.1: Amend subsection 48(5) to provide further clarification as to which health care providers or other individuals will participate in the interdisciplinary care conference and include a statement that the resident and/or the resident's substitute decision-maker must be included as participants in the interdisciplinary care conference and the health providers are required to obtain an informed consent to any plan of care from the resident if capable, or his or her substitute decision maker if the resident is not capable.

Section 49 – Approval of the plan of care

In the event that a resident's plan of care is subject to approval by a member of the College of Physicians and Surgeons of Ontario (CPSO) or the College of Nurses of Ontario (CNO) as required by subsection 49(1) of the proposed regulations, ACE submits that the issue of who will cover the cost of the development and approval of the

plan of care is unclear. We submit that licensees should not be permitted to charge for providing these services given that they are required by the *RHA* and the proposed regulations as almost a "pre-condition" of tenancy.

ACE submits that a resident's plan of care should be directly approved by a member of the CPSO or the CNO. If this is not possible, however, and the plan of care is to be approved by a person acting under the supervision of a member of the aforementioned Colleges, ACE submits that this individual must be acting under their **direct** supervision.

Recommendation 49: Amend subsection (49)(1)(ii):

> a person acting under the **direct** supervision of a member of the College of Physicians and Surgeons of Ontario or the College of Nurses of Ontario.

PERSONAL ASSISTANCE SERVICES DEVICES AND RESTRAINT

GENERAL COMMENTS

We cannot emphasize strongly enough that licensees under the RHA are, in effect, landlords and the relationship between licensees and residents is a tenancy. For this reason, ACE has serious concerns with respect to sections 52 to 54 of the proposed regulations as they are currently drafted. We had stated previously in our submissions to Bill 21:

> *ACE is unequivocal in its opinion that retirement homes should never be allowed to restrain or detain tenants, except in accordance with the common law. Retirement homes are tenancies which lack government inspection under Bill 21; to allow them to restrain or detain residents is analogous to allowing a superintendent to lock tenants in their apartments if they deem it to be appropriate.*

Based on our analysis of the *RHA* and the proposed regulations, we conclude that there is the potential for confusion on the part of licensees with regard to the circumstances whereby they would have authority under the common law to restrain residents either physically or by a drug. The proposed regulations do not emphasize the very limited circumstances under which the common law duty allows a caregiver to restrain or confine a person to secure unit of retirement home.

The extensive and detailed wording at sections 53 and 54 of the proposed regulations covering "Restraint by a physical device" and "Restraint by a drug", respectively,

neglects to emphasize the scope and limitations of the common law duty on restraints and instead gives the impression that restraints by physical device and/or drug are more permissible than they actually are. Further, we understand that the initial draft regulations that have been released for comment do not include provisions addressing confinement as that phase of the regulations have not been released. We believe that it is important that an opportunity is afforded to stakeholders to comment on all regulations relating to personal assistance services devices, restraints and confinement once they have been released in their entirety.

To begin our discussion of sections 52 to 54 of the proposed regulations, it is important to review the relevant sections of the *RHA* which for ease of reference we have reproduced below:

Section 68 – Restraints prohibited

68.(1) No licensee of a retirement home and no external care providers who provide care services in the home shall restrain a resident of the home in any way, including by the use of a physical device or by the administration of a drug except as permitted by section 71.

Section 69 – Use of personal assistance services devices

69. (1) A licensee of a retirement home or an external care provider who provides care services in the home may permit the use of a personal assistance services device for a resident of the home only for the purpose of assisting the resident with a routine activity of living.

Restrictions on use

(2) A licensee of a retirement home or an external care provider who provides care services in the home may permit the use of a personal assistance service device for a resident of the home only if,

(a) the licensee has considered or tried the alternatives to the use of the device but has found that the alternatives have not been, or considers that they would not be, effective to assist the resident with a routine activity of daily living;
(b) the licensee has considered or tried alternatives to the use of the device but has found that the alternatives have not been, or considers that they would not be, effective to assist the resident with a routine activity of living;
(c) the use of the device is reasonable, in light of the resident's physical and mental condition and personal history, and is the least restrictive of

such devices that would be effective to assist the resident with a routine activity of living;

i. one or more of the following persons have approved the use of the device: a legally qualified medical practitioner,
ii. a member of the College of Nurses of Ontario,
iii. a member of the College of Occupational Therapists of Ontario,
iv. a member of the College of Physiotherapists of Ontario,
v. any other prescribed person;

(d) the resident or, if the resident is incapable, the resident's substitute decision-maker has consented to the use of the device;
(e) the use of the device is included in the resident's plan of care; and
(f) the device is used in accordance with the prescribed requirements, if any.

Section 71 – Common law duties re restraint and confinement

71. (1) Nothing in section 68, 69, or 70 affects the common law duty of a caregiver to restrain or confine a person to a secure unit of a retirement home when immediate action is necessary to prevent serious bodily harm to the person or to others.

Limitation on restraint by physical device

(2) A licensee of a retirement home who is having a resident of the home restrained by a physical device pursuant to the common law duty described in subsection (1) shall ensure that the device is used in accordance with any applicable regulations.

Limitations on restraint by drug

(3) A licensee of a retirement home who is having a resident of the home restrained by the administration of a drug pursuant to the common law duty described in subsection (1) shall ensure that the drug is used in accordance with any applicable regulations and that its administration was ordered by a legally qualified medical practitioner or another person belonging to a prescribed class.

According to the *RHA,* restraints are prohibited and only permitted under the common law. **Under the common law, a caregiver may only restrain or confine a person where immediate action is necessary to prevent serious bodily harm to the person or to others.** ACE submits that the risk of harm must be **imminent** and the form and extent of the confinement or the restraint imposed must be reasonable based on an assessment of all the relevant factors. Subsequently, we cannot emphasize

enough the fact that restraint or confinement by a caregiver under the common law is only justified as long as there is an immediate risk of imminent harm. Once that is no longer the case, the common law duty of a caregiver to restrain or confine a person is no longer applicable. Therefore, this could be particularly problematic where a licensee administers a long-acting drug or substance for the purpose of restraining a resident purporting that it is pursuant to the common law duty described in subsection 71(1) of the Act.

Based on this analysis, ACE's position is that under no circumstances should retirement homes have any physical device on site is intended to be used as a restraint. For a retirement home to have available such a device on site would be contrary to section 68 of the *RHA*. Similarly, a retirement home should not have on site any drug or substance that is not specifically prescribed to a resident of the home for the purposes of treatment. No drug or substance should be used as a medical restraint.

ACE submits that the proposed regulations around the use of personal assistance services devices and restraints should make abundantly clear the point that the common law duty to restrain or confine only applies where there is an immediate risk of imminent harm and once that passes, the restraining and/or confining of a resident is contrary to the common law duty and, in our opinion, section 7 of the *Charter of Rights and Freedoms*. The regulations, as drafted, read as a guide to using restraints on a continuing basis and will leave the landlords of retirement homes with the impression that restraints may be used in a way that exceeds the use under the common law.

Section 52 – Personal assistance services devices

There is no recognition in the proposed regulations as they are currently drafted of the potential for personal assistance services to devices to limit movement and, depending on the physical limitations of the resident, become restraints.

There is no comparable section on prohibited devices that limit movement similar to section 112 in the *LTCHA* O. Reg. 79/10. The same devices listed at section 112 of the *LTCHA* O. Reg. 79/10 are found at section 23 of the proposed regulations.

Section 23 of the proposed regulations state that for safety and public health requirements, the devices listed shall not be used in a retirement home. ACE submits that given the nature of the devices listed at section 23 and the fact that they limit movement, it is important to ensure that the regulations make it clear that these very same devices shall not be used in a retirement home because they limited movement and not simply for safety reasons.

Recommendation 52: Include an additional provision subsequent to section 52 of the proposed regulations with the following wording:

> **For the purposes of section 68 of the Act, every licensee of a retirement home shall ensure that none of the following devices are used in the home:**
>
> 1. **Roller bars on wheelchairs and commodes or toilets**
> 2. **Vest or jacket restraints**
> 3. **Any device with locks that can only be released by a separate device, such as a key or magnet.**
> 4. **Four point extremity restraints.**
> 5. **Any device used to restrain a resident to a commode or toilet.**
> 6. **Any device that cannot be immediately released by staff.**
> 7. **Sheets, wraps, tensors or other types of strips or bandages used other than for a therapeutic purpose.**

Section 53 – Restraint by a physical device

ACE does not support section 53 of the proposed regulations as they are currently drafted. Specifically, we take issue with the fact that the provision gives the impression that there are circumstances where the legislation authorizes retirement homes to restrain a resident by a physical device outside of the scope of the common law duty we have described above. It is our submission that this is inaccurate and for this reason, we recommend that certain amendments be made to section 53.

Our interpretation of the *RHA* is such that a retirement home under section 68 is prohibited from restraining a resident of a home in any way except as permitted by the common law. This is not unlike the authority granted to long-term care homes under the *LTCHA* and regulations to restrain residents pursuant to the common-law duty. Retirement homes should be required to adhere to the same regulations as a licensee of a long-term care home if they are given the same powers to restrain. If the common law duty to restrain is applicable to both settings, then the responsibilities of retirement homes should be the same as those of long-term care homes.

Recommendation 53: ACE submits that section 53(1) of the proposed regulations should be removed entirely as the information set out gives the impression that there is authorization granted under section 71 of the *RHA* that allows a retirement home to restrain a resident beyond the scope of the common law. If the restraint is required because **immediate action is necessary to prevent an imminent risk of harm**, then under such circumstances it would never be the case that situations described at subsection 53(1) 1. to 4. would ever apply.

Recommendation 53.1: Include a provision in section 53 that reads:

> **Scope and limitation of restraint of a resident under the common law**
>
> **Every licensee of a retirement home shall ensure that the home's written policy under subsection 68(3) of the Act deals with:**
>
> **(a) restraining under the common law duty pursuant to section 71 of the Act when immediate action is necessary to prevent serious bodily harm to the person or others.**

Section 54 – Restraint by a drug

ACE does not support the restraining by a drug of a resident by a licensee without consent unless it is required to prevent serious bodily harm pursuant to the common law duty described in subsection 71(1) of the Act. It is our submission that it should be made abundantly clear in the proposed regulations that the only time that the administration of a drug to restrain a resident may be ordered is **when immediate action is necessary to prevent serious bodily harm to the resident or to others pursuant to the common law duty described in subsection 71(1) of the Act [emphasis added]**.

Further, it is our submission that the regulations need to clearly state that once the threat of serious bodily harm to the resident or to others has passed, the common law duty is no longer applicable and the restraint by a drug of a resident must cease immediately.

Recommendation 54: Include a provision that states:

> **Every licensee shall ensure that every administration of a drug to restrain a resident when immediate action is necessary to prevent serious bodily harm to the resident or to others pursuant to a common law duty described in subsection 71(1) of the Act ceases immediately once the threat of serious bodily harm to the resident or others has passed.**

Recommendation 54.1: Inclusion of a provision that states the following:

> **(3) Every licensee shall ensure that with respect to subsections (1) and (2) above, that adequate safeguards respecting issues such as regular monitoring intervals, the review of individual restraint use, least restraint policies, annual reporting requirements and annual training for staff are developed and implemented.**

RECORDS

Section 55 – Contents of records

ACE submits that the contents and retention of staff records is important in retirement homes to ensure continuity of care, where possible and to ensure that vulnerable residents are afforded as much protection as possible by requiring licensees to know who they are hiring to provide direct care to residents. It is our submission that subsection 55(5) does not go far enough to specify the staff records that a licensee of a retirement home should retain.

Recommendation 55: Remove subsection 55(5) and instead, add an additional provision with wording that is the same or comparable to what is found at section 234 of the *LTCHA* O. Reg. 79/10 with the requisite amendments.

Section 56 – Format and retention of records

ACE submits that section 56 of the proposed regulations is vague with respect to what is expected of a licensee in terms of the format and retention of records. Further, section 56 does not differentiate between the different categories of records that a retirement home is required to keep under the Act or the proposed Regulation (i.e. staff records, resident records). It is our submission that the proposed regulations should include clear provisions around the obligations of a retirement home with respect to staff records and resident records.

Recommendation 56: Amend the wording in subsection 56(4) by removing the words "…for a reasonable length of time to be determined based on the nature of the record…" by including separate provisions relating to staff records and resident records; with clear language as to how long licensees are required to these types of records at the retirement home.

Retirement 56.1: We recommend the inclusion of provisions with wording that is the same or comparable to that found at sections 231 to 238 of the *LTCHA* O. Reg. 79/10.

Section 59 – Immediate inspection of retirement home

As it they are currently drafted, the proposed regulations only require the Registrar of the Authority to "ensure that an inspector visits the home immediately" where a complaint is received with respect to subsection 83(1) of the Act with respect to a

retirement home or the Registrar receives information that there has been a contravention of section 115 of the Act which addresses instances of whistle-blowing and retaliation as a result of the same.

ACE submits that the circumstances whereby the Registrar shall ensure that an inspector visits the home immediately should extend beyond the scope of subsection 83(1) and section 115 of the Act. Where the Registrar and the Authority receive a complaint or any information relating to allegations of abuse and neglect - certainly where the retirement home has contacted the local police – we submit is another instance where the Registrar should ensure that an inspector visits the home in question immediately. There may be other situations where an immediate visit by an inspector is warranted and we urge the OSS to consider what these may be and broaden the scope of section 59 in the proposed regulations.

Recommendation 59: Expand the section to require the Registrar to ensure that an inspector visits the home immediately where they receive a complaint or any information with respect to a retirement home indicating allegations of abuse and/or neglect of a resident of the home; including but not limited to circumstances where the appropriate police force has been contacted.

GENERAL

Section 60 – Registers

In addition to the information stated in section 60 of the proposed regulations to be included on the register, we submit that additional information relating to any license suspensions or revocations should also be made available. To ensure transparency, it is our position that information with respect to any conditions placed on a license; a brief summary of the most recent inspection report; and information on any orders issued by the Authority or appeals from orders/decisions of the Authority by the licensee should be made available to the public on the register.