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January 31, 2013

Ministry of Health and Long-Term Care
Health System Strategy and Policy Division
Health Policy and Care Standards Branch
Aging and Long-Term Care Unit
56 Wellesley Street West, 9th Floor
Toronto, ON M7A 2J9

Dear Sirs/Mesdames:

**Re: Proposed amendments to Ontario Regulation 79/10 under the *Long-Term Care Homes Act, 2007*
Proposal 12-HLTC020**

The Advocacy Centre for the Elderly ("ACE") is a speciality community legal clinic funded by Legal Aid Ontario. ACE is the first and oldest legal clinic in Canada with expertise in legal issues pertaining to older adults. The mandate of ACE is to provide a broad range of legal services to low income seniors living in Ontario. Since ACE first opened in 1984, we have provided legal services, such as individual and group client advice and representation; public legal education; community development; and law reform activities on issues that impact older adults.

On average, ACE receives over 2,500 client intake inquiries annually. Over half of the intakes and client cases that ACE assists with are health law issues. Most of the telephone inquiries come from the Greater Toronto Area with approximately 20% originating from other areas of the province. From time to time, ACE also receives inquiries from outside of Ontario.

ACE supports the efforts of the Ministry of Health and Long-Term Care ("Ministry") on behalf of the Government of Ontario to enhance clarity and update terminology to O. Reg. 79/10 under the *Long-Term Care Homes Act, 2007* ("LTCHA"), through the proposing of amendments which we are commenting on at this time.

We thank the Ministry for allowing staff to meet with stakeholders to discuss the proposed amendments. This helped us to better understand the proposals and to clarify their intent. However, the document released for comment is only a description of the proposed amendments to the regulations and not the actual amended regulations themselves. ACE urges the Ministry to consider releasing the actual wording of the amended regulations for

comment as this will allow for more effective and meaningful input by ACE and other stakeholder groups.

PROPOSED AMENDMENTS

Proposed Amendment to Admissions Process for Short-Stay Convalescent Care Program (CCP) Beds

ACE has concerns with respect to the new referral process being recommended and the removal of applicant choice for CCP beds.

First, we would like to acknowledge that CCP beds are a valuable asset and useful tool to the healthcare system in Ontario. We recommend their use and hope that the Ministry is committed to increased funding of these beds to ensure availability across the province. However, we are very concerned that these beds will be taken from existing long-term care stock and would not support this. We are presently in a crisis regarding the availability of long-term care beds: removing beds from the system to make them CCP beds would only add to the problems. ACE submits that any additional CCP beds must be extra long-term care beds so that there is no impact on existing beds and waiting lists.

We further submit that there must be a requirement in the regulations that CCP beds not be mixed with regular long-term care home beds. We do not believe that such mixing, which occurs in some homes today, is conducive to the goals of the convalescence program.

While it is understood that it is important to have flow-through in CCP beds and to utilize the small stock of available beds, ACE submits that the more prescriptive nature of this regulation, including the removal of choice from the process, will be detrimental to applicants.

The proposed regulations recommend that the CCAC placement co-ordinator identify the home(s) to which the applicant would be referred, considering "certain factors" such as preference, support networks and available resources in the community. At present, no specific parameters are included, there is no mechanism to determine whether those parameters were, in fact considered, and there is no way to challenge the decision of CCAC placement co-ordinators. While the proposed regulation states that consent is required, we do not believe that informed consent would always be obtained.

Under the proposed scheme, it is not clear from the information provided whether consent would be required from applicants to have their information sent to a potential CCP bed facility to determine eligibility. We submit that this should be a requirement. If an applicant did not want their application to go to a specific facility which is one identified by the CCAC placement co-ordinator, would this mean that they could not apply to any other home?

ACE submits that the proposed system would be vulnerable to misuse. Unfortunately, we are receiving an increasing number of complaints from long-term care home applicants

and their substitute decision makers about the application process for long-term care from hospital. We have also had numerous problems with the application process for CPP beds, including both inappropriate referrals and the failure to make referrals. It is our experience that CCAC placement co-ordinators are already attempting to manipulate placement decisions: giving the placement co-ordinators the ultimate decision for referrals will, in our opinion, lead to inappropriate referrals and referrals that are not made in consideration of the applicant's needs.

ACE submits that the proposed regulations could also be used to deny a person's eligibility for long-term care altogether. If an applicant did not want to go to a specific CPP bed, the proposed regulations suggest alternatives are to be discussed. Would the person be denied the ability to apply for long-term care as one of these options?

Finally, ACE submits that there may be no true consent to placement in the suggested scheme. If the only options available to applicants are the bed(s) suggested by the CCAC placement co-ordinator or being discharged into an unsafe environment in the community, this may be no choice at all.

Proposed Amendment to Qualifications for Staff in LTC Homes

ACE takes no position regarding the recommended change allowing portability of employment for the grandfathered staff. We also take no position regarding the updating of the qualifications of the staff.

ACE would like to submit here, however, that the lack of an effective personal support worker registry continues to be problematic. For further discussion of our views on this topic, please see Clara Ho's to Charles Beer, PSW Registry Chair dated September 4, 2012, attached.

Proposed Amendment to Admission and Discharge Requirements for Specialized Units – s. 177

The proposed amendments will expand s. 177 of the regulation to allow persons discharged from a specialized unit and waiting to return to their original LTC home to be placed in the readmission category. It will also create a new category between categories 2 and 3 which will allow persons who have been in a specialized unit in a home to apply to a new home.

ACE submits that these amendments will be of value to long-term care home residents. They will allow persons to move through the specialized units without penalty, and allow them to return to, or move to, a LTC home which can meet their needs once they no longer need a specialized unit.

The second part of this proposed amendment will allow regular applicants to be placed into a specialized unit where there are no applicants on the waiting list for that particular specialized unit.

ACE submits that the amendment will have to be drafted very carefully to ensure that all information about the unit be provided to the applicant or their substitute decision-maker so that they are able to make an informed choice regarding that unit. ACE further submits that the amendment be clear that an applicant may refuse the bed without application of the penalty set out in s. 167.

Proposed Amendments to Critical Incident Reporting – s. 107

The proposed amendments recommend that “loss of essential services” and “flooding” be considered an environmental hazard instead of an emergency. It further proposes to amend the reporting criteria regarding an “environmental hazard” to clarify that it apply to an incident that affects “one or more” residents. ACE takes no position on these amendments.

The proposed amendment recommends that section 107(3)4 be changed so that the injury is only to be reported when the resident is admitted to a hospital.

ACE submits that this amendment not be made. Hospitals will often not admit patients due to the sole fact that the person is a resident of a LTC home. This amendment would therefore not capture a number of residents whose injuries should be reported. Discussions at meetings with the Ministry dealt with trying to refine this section and it was suggested that reporting be necessary only where treatment was required. This is also unsatisfactory because there are many injuries which cannot be treated (such as broken ribs and toes) or where treatment is contraindicated due to health reasons.

As the purpose of this section is to protect the safety of LTC home residents by ensuring that the Ministry is made aware of injuries occurring within the home and to conduct inspections, ACE submits that the suggested amendment not be made and that the regulation remains in its present form.

FURTHER SUGGESTIONS

Redrafting and Enactment of sections 32 and 45 of the *LTCHA*

The *LTCHA* was enacted on July 1, 2010, with the exceptions of the sections pertaining restraining using locks and barriers and admission to a secure unit.

Unfortunately, LTC homes continue to restrain and detain residents, both within the secure units as well as within the rest of the home, without legal authority.

In our original submissions on the *LTCHA*, we clearly set out the need for the enactment of such legislation. Residents continue to be restrained and detained without legal authority and without the right of review. We are advised by our clients that homes often have “blanket” policies which prevent **any** resident from leaving the LTC home unescorted, with no consideration of their capacity. We often have to contact the LTC home and the Ministry to gain the freedom of movement for our clients.

Further, failing to enact these sections means that meaningful access to justice is unavailable to residents who disagree with their detention. LTC homes, as well as Ministry inspectors, often rely on the “common law duty” to support their position on detention; however, this does not allow the resident a fair hearing in accordance with the fundamental principles of justice to which they are entitled under s. 7 of the *Charter of Rights and Freedoms*. We are attaching an excerpt from ACE’s *Long-Term Care Facilities in Ontario: The Advocate’s Manual on Restraint, Detention and Locked Units*, as well as our submission on January 17, 2007, to the Standing Committee on Social Policy which looks at these issues in detail.

ACE submits that the Ministry must take steps to support the enactment of appropriate sections in the *LTCHA* to ensure that residents are being treated fairly. This will require amending the sections as presently drafted, as these are not sufficient. Rights must be given to any resident who is detained, whether it is on a locked unit or being prevented from leaving the facility.

ACE is pleased to discuss these amendments and their enactment with the Ministry at any time.

Addition to Offences under the *LTCHA*

ACE continues to receive hundreds of calls annually regarding conflicts in the process of placement into LTC homes. Unfortunately, CCAC placement co-ordinators who have been given authority for the placement process are knowingly providing misinformation to prospective clients and their substitute decision-makers. We believe that the only way to prevent this from continuing is by making this an offence punishable under the *LTCHA*.

It is ACE’s experience that CCAC placement co-ordinators frequently provide misinformation to patients and their SDMs. The following re examples of the most common problems:

- The CCAC says it is “not allowed” to take applications from hospital patients;
- The CCAC refuses to take LTC home applications from hospital patients;
- The CCAC says it can only take applications from patients with “permission” from hospital management;
- The CCAC claims that LTC home applications can only be made from the community and that the patient must go home or to a retirement home before an application can be made; and
- The CCAC tells applicants that they must choose a specific number of homes, beds from short lists, idle beds, specific homes, or more than five homes (in a non-crisis situation), in order for their choice list to be “accepted”.

Because of this misinformation, patients are often forced into inappropriate living arrangements. Common examples include:

- Going to expensive retirement homes, which are **TENANCIES**, **NOT** regulated health facilities, and at which health care services are primarily private pay.

These retirement homes cannot provide the appropriate care, and the individuals did not want to go to these places in the first place;

- Returning home into an unsafe situation and being cared for by a spouse or family member who are themselves unwell and unable to provide the necessary care, even with extra support services;
- Moving back home alone where they cannot cope; and
- Being discharged into other substandard living arrangements, including motels with community services.

Families and patients continually complain about the bullying and harassment which occurs in hospitals during the placement process by both hospital and CCAC staff.

ACE submits that an amendment to the legislation creating offences for the following would ensure that the rights of prospective applicants are upheld:

- Failure to provide valid, legally correct information during the admission process;
- Lying to applicants and their SDMs/Families about the long-term care admission process;
- Refusing to take an application; and
- Blocking an application from being taken.

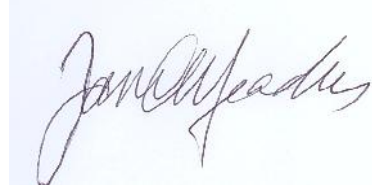
CONCLUSION

Thank you for the opportunity to provide comments respecting the proposed amendments to O. Reg. 79/10 under the *LTCHA*. We urge the Ministry to consider our submission and welcome the opportunity for any further discussion on this or any future proposed amendments to the *LTCHA* and O. Reg. 79/10.

Should you have any further questions or concerns please do not hesitate to contact me at (416) 598-2656 or by email: meadusj@lao.on.ca.

Yours truly,

ADVOCACY CENTRE FOR THE ELDERLY



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