



**Advocacy Centre
for the Elderly**

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BY E-MAIL: residential.tenancies@ontario.ca

Sonya Rolfe, Manager
Residential and Commercial Tenancies Unit
Housing Policy Branch
Ministry of Housing
777 Bay Street, 14th Floor
Toronto, ON M5G 2E5

Dear Ms. Rolfe:

**Re: Comments on the Long-Term Affordable Housing Strategy Update –
Proposals regarding Transitional Housing**

We are writing in response to the Proposals regarding Transitional Housing (Proposal) , a part of the Long-Term Affordable Housing Strategy Update of the Ministry of Municipal Affairs and Housing ("Ministry"). We thank you for the opportunity to provide our submissions in this regard. This submission also responds to some of the questions outlined in the Proposal provided by the Ministry.

In this response, for the reasons that follow, the Advocacy Centre for the Elderly (ACE) supports Option 3 outlined in the Proposal, with some modifications, and suggests some changes to the proposed definition of transitional housing.

About the Advocacy Centre for the Elderly

ACE is a specialty community legal clinic, funded by Legal Aid Ontario. It was established to provide a range of legal services to low income older adults in Ontario. These 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 in Toronto, and is the first and oldest legal clinic in Canada with expertise in legal issues of the older population.

On average, ACE receives over 4,000 calls from older adults, families of older adults and health and social service providers annually. Most of the telephone inquiries come from the Greater Toronto Area with approximately 20 percent originating from other areas of the province. From time to time, ACE receives inquiries from outside of Ontario.

Clients regularly seek our advice on issues relating to accommodation and care in housing, including transitional and supportive housing, and “care homes” under the *Residential Tenancies Act, 2006 (RTA)*.¹ Care homes include retirement homes under the *Retirement Homes Act, 2010 (RHA)*.² ACE also receives numerous calls regarding long-term care homes under the *Long-Term Care Homes Act*.

Specifically, ACE has received numerous calls regarding complaints with the care services³ being provided in housing, unreasonable increases in costs of care services, withdrawal of services where the tenant is regarded as undesirable and the home wishes that the tenant leave. We have also received calls regarding tenants being detained or denied visitors in their care homes and in other forms of housing. Finally, one of the most common calls we receive is regarding callers being sent to unsuitable residences on a discharge from hospital although they wish to apply to or have been determined to require long-term care.

Given our expertise, ACE receives many requests from community legal clinics, lawyers, advocates and others across Ontario for assistance and recommendations on legal approaches on care homes and housing issues more broadly.

ACE is also involved in significant law reform activities relating to housing. In 2010, ACE made submissions to the Standing Committee on Social Policy regarding then Bill 21, the *RHA*. Our Executive Director is a member of the Stakeholder Advisory Council which provides advice to the Board of Directors of the Retirement Home Regulatory Authority (RHRA) on matters relating to the RHRA's mandate. ACE has recently made submissions to the Ministry on the amendments to the *RTA* as part of the Long-Term Affordable Housing Strategy Update, and the Draft Supportive Housing Policy Framework.

Given ACE's experience over the years of working on housing law and policy issues as they impact older adults in Ontario and across Canada, we trust that our submissions concerning the Proposal will be of assistance.

Background

Transitional housing, though intended to be short in duration, is vital to adults as they age. Older adults may face substantial changes in housing when they begin to have greater care needs. After a stay in hospital, for example, they may require home care for support with activities of daily living, community support services, supportive housing, or long-term care. This is also true of older adults with addiction or mental health issues who face significant housing barriers.

¹ S.O. 2006, c. 17

² S.O. 2010, c. 11

³ “Care services” in the *RTA* means health care services, rehabilitative or therapeutic services or services that provide assistance with daily living. This includes, for example, nursing care, bathing assistance, and assistance with dressing and personal hygiene. Recreational or social activities, housekeeping, laundry, and assistance with transportation are considered care services only if they are provided along with another care service.

Although transitional housing is intended to be temporary, the tenants that participate in these programs are a highly vulnerable, marginalized and powerless population that is left without any protection where they are excluded from protections available under the *RTA*. As noted in the Proposal, these transitional homes have programs that run the gamut, at times providing care services to tenants with significant care needs. It is vital that there be oversight of these programs and that tenants have the ability to challenge withdrawals of service or restrictions that may be placed on them as a result of these programs.

Our older adult population also faces a unique challenge in respect of transitional housing. In response to the overwhelming demand for long-term care in some of the Local Integration Health Networks (LHINs), some homes have been designated and are subsidized by the LHINs to receive persons awaiting placement into long-term care into "transitional beds".⁴ People are promised a high level of care and being given a "crisis" or priority designation so these placements are understood to be limited in duration.

However, callers to ACE have complained that these beds are not set up appropriately, would not satisfy long-term care home standards and do not meet the care needs of the tenants. These tenants are often placed with multiple tenants in a room with a personal support worker. They may not have privacy and may share the space with their caregiver. Although it depends on the home, some of these tenants do not have access to rest of the facility, such as the congregate living or dining spaces, and are essentially confined to that room, despite paying high accommodation rates. These tenants are expected to wait in these facilities until a bed is available in the long-term care home of their choosing.

ACE understands that these "transitional beds" are being administered in some areas in Ontario, purporting to have temporary licenses from the Local Health Integration Networks (LHINs). Nevertheless, it is ACE's position that these beds are illegal as under the *Long-Term Care Homes Act*, only the Ministry of Health and Long-Term Care can provide such a license.⁵

These types of programs also contradict the recommendations of the Nineteenth Annual Report of the Geriatric and Long-Term Care Review Committee to the Chief Coroner for the Province of Ontario.⁶ The report discussed a case where a 92-year-old frail elderly person was transferred to a private care home from hospital pending final placement in

⁴ An example is the Hamilton Niagara Haldimand Brant (HNHB) LHIN's "Transitional Wellness Capacity Project". This program has designated certain spaces in retirement homes in the LHIN catchment area to act as transitional placements for patients awaiting long-term care. Vickie Baird, "Transitional Wellness Capacity Project", *Presentation to the Hamilton Niagara Haldimand Brant (HNHB) Local Health Integration Network (LHIN) Board of Directors*, May 28, 2014, available at: http://www.hnhblhin.on.ca/boardandgovernance/boardmeetings/boardmeetingsarchive/2014-2015/~media/sites/hnhb/uploadedfiles/Public_Community/Board_of_Directors/Board_Meeting/B.2_Transitional%20Wellness%20Capacity%20Project%20Presentation%20HNHB%20Board%20May%202014.pdf

⁵ *Long Term Care Homes Act, 2007*, S.O. 2007, c. 8, s. 95 - 99

⁶ *Nineteenth Annual Report of the Geriatric and Long-Term Care Review Committee to the Chief Coroner for the Province of Ontario*, September 2009, Case 5, available at:

<http://www.mcscs.jus.gov.on.ca/stellent/groups/public/@mcscs/@www/@com/documents/webasset/ec080177.pdf>

long-term care. Limited staff time was indicated as possibly contributing to her developing hypernatremia and dehydration. The report provided that:

The circumstances surrounding this woman's death should alert health care professionals that, despite pressures to move the frail elderly out of hospitals to other settings, such as private care homes to await placement in a long term care home, it is important to remember that these elderly clients are awaiting long term care home placement precisely because their care needs are so heavy that they are difficult, if not impossible, to provide in a community, private care setting.⁷

The Coroner recommended that "While awaiting placement in a Ministry of Health and Long-Term Care licensed long term care home, these frail elderly patients should remain in a setting that is as resource-intensive as a licensed long term care home," and further that "Programs in private care or retirement homes in the Province of Ontario providing care to the frail elderly residents awaiting placement in a licensed long term care home should be held to the same standards for care and services as a licensed long term care home. Implicit in this recommendation is the need to ensure the same regulations and inspections with regular public reporting of findings that exists for licensed long term care homes."⁸

ACE is seriously concerned that these types of transitional programs which are inappropriate stop-gap measures for persons who should be in long term care will be unintentionally legitimized through the amendments to the *RTA* regarding transitional housing.

With these circumstances in mind, we will comment below on the substantive issues raised in the Proposal.

1. The Definition of Transitional Housing

The definition of transitional housing proposed reads as follows:

living accommodation that the provider and participant agree is to be temporary, with a specified duration that does not exceed three years; is paired with support services provided for the purpose of rehabilitation and/or to gain skills necessary for independent living in permanent housing (life, employment, and other); and where the temporary housing and support services are subsidized.

This definition emphasizes the transitional and rehabilitative nature of the accommodation. This definition would also exempt the type of transitional bed programs discussed in the earlier section because they require that a person transition to independent living care. For greater certainty, ACE recommends that the legislation state that this section is not intended for persons who have been determined to be eligible for

⁷ *Ibid.* pg. 40

⁸ *Ibid.* pg. 40 -41

long-term care.

It would also be important to emphasize that the transitional housing provisions would not apply to other types of housing covered by the *RTA*, but may be temporary in nature. As noted above the *RTA* applies to care homes, which include retirement homes, domiciliary hostels (in part) and most supportive housing units. The Proposal also notes that the care home provisions have particular sections which address housing that is of a specific duration.

The transitional housing provisions as proposed should not supersede the care home provisions, unless they purport to provide the same level of protection, or greater, to that tenant. These protections include notice periods for increase in care service costs, notice in respect of eviction for specific reasons as noted in the *RTA*, or requiring an application to the Landlord and Tenant Board to transfer out a tenant because their care needs are too great. ACE strongly recommends that this protection continue in respect of care homes. This supports the recognition in the legislation that those who require care services may be in a particular position of vulnerability and require significant protections of their rights as tenants.⁹ All other transitional housing can be covered under the proposed provisions.

Under the proposed definition, transitional housing is defined having maximum duration of three years. Three years is a very long period of time for what is intended to be a temporary option. ACE is cognizant of the fact that some transitions to independent living may take longer than others and that it would be counter-therapeutic to have someone leave a program too early because of an arbitrary legislative time limit. ACE does not have a recommendation on the particular duration of a program for it to be considered transitional housing. However, ACE strongly suggests that if the duration is three years, that the Ministry conduct a review of the legislation at the end of the three years to determine if this period is too long and unduly limits tenants' rights.

2. Support for Option 3 of the Proposal

In ACE's opinion, Option 3 strikes an appropriate balance between tenant rights and the ability of the service provider to run a therapeutic or rehabilitation program effectively.

Option 1, which merely proposes to increase the exemption from the *RTA* for transitional housing from one to three years, does not offer the corresponding protections necessary for transitional housing tenants.

⁹ Until 1994, most care homes were unregulated and excluded from Ontario's residential tenancy legislation. As a result, care home tenants were at risk of arbitrary evictions, sudden steep rises in costs, unsafe living conditions, sexual, physical and financial abuse, lack of privacy, and inadequate care.

In 1990, the Government appointed a commission to inquire into unregulated residential accommodation for vulnerable adults after Joseph Kendall, a resident of an unregulated boarding home in near Orillia, died. In the final report, *A Community of Interests, The Report of the Commission of Inquiry into Unregulated Residential Accommodation* (1992), Commissioner Ernie S. Lightman made 148 recommendations, which were intended to inform Bill 120, *An Act to amend certain statutes concerning residential property* (which became the *Residents' Rights Act, 1994*)

Option 2, requiring that all tenants have agreements with housing providers which provide the program rules, dispute resolution measures, terms of exit or re-entry, offers more protection to tenants. However this protection would be in name alone, as tenants would not be able to enforce violations of the agreement before the Landlord and Tenant Board, where tenants have greater access to legal services in order to assist them. Any such agreement would have to be enforced in the Ontario Courts. For the average tenant, accessing that forum would be costly, and they may not be able to afford such an expense. Therefore, this option would limit the accountability of these programs to their tenants.

Option 3, which requires an agreement between the service provider and the tenant as noted to Option 2 and Bill of Rights which would be enforceable by the Landlord and Tenant Board, adequately protects tenant rights. The Bill of Rights proposed under this option would include a complaints process for tenants which they can use without fear of reprisal, ensure that tenants are not 'evicted' without another appropriate place to go and can protect tenants from harsh rules with no rehabilitative purpose.

ACE would recommend that in the interests of fairness to the tenant, the streamlined process require that the service provider provide evidence to the Landlord and Tenant Board that the issues leading to eviction were discussed with the tenant, that the tenant does have an appropriate place to go if evicted, and allow the tenant 20 days to move to set aside the Landlord and Tenant Board's order of eviction. This increased time period would permit the tenant to consult with counsel if necessary.

ACE also recommends that notice provisions apply to the increase in rent or costs of services so that the service provider cannot use frequent increases in costs to unfairly evict a tenant without review. Exorbitant increases have been used in the care home context in the past to evict persons who require too much care and where the care homes want to avoid an application to the Landlord and Tenant Board to transfer the tenant out for that reason.

Conclusion

Transitional housing is an integral part of continuum of housing and supports available to adults as they age. However, it is vital that this form of housing ensure the rights of tenants in transitional housing are being protected without sacrificing the rehabilitative and therapeutic potential of these programs.

ACE recommends that:

- a review of the changes to the *RTA* be conducted by the Ministry in three years;
- care homes be exempt from the definition of transitional housing;
- an exemption be carved out of transitional housing to ensure that it is not applied to persons awaiting long-term care;

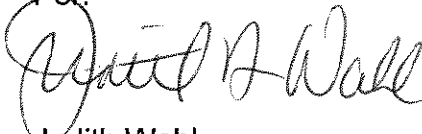
- the streamlined process before the Landlord and Tenant Board require that the service provider provide evidence to the Landlord and Tenant Board that the issues has be discussed with the tenant, that the tenant does have an appropriate place to go if evicted, and allow the tenant 20 days to move to set aside the Landlord and Tenant Board's order of eviction; and,
- notice provisions apply to the increase in costs of rent or services.

Thank you for the opportunity to provide comments respecting the Proposal. We urge the Ministry to consider our submission and welcome the opportunity for any further discussion.

Yours very truly,

ADVOCACY CENTRE FOR THE ELDERLY

Per:



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