



**Advocacy Centre
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DELIVERED BY EMAIL

5 May 2011

Honourable Deb Matthews, Minister of Health and Long-Term Care
Ministry of Health and Long-Term Care
56 Wellesley Street West, 9th Floor
Toronto, ON M7A 2J9

Dear Minister Matthews,

**Re: *Long-Term Care Homes Act, 2007 (LTCHA) O. Reg. 79/10*
Proposed amendments to Ontario Regulation 79/10 under the Long-Term
*Care Homes Act, 2007***

The Advocacy Centre for the Elderly (“ACE”) is a speciality community legal clinic funded by Legal Aid Ontario to provide services to low income seniors located in Toronto, 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. Most of the telephone inquiries come from the Greater Toronto Area with approximately twenty percent originating from outside of this region from other areas of the province. From time to time, ACE 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, 2007)*, through the proposing of amendments which we are commenting on at this time.

We understand, however, that the document released for comment via the Regulatory Registry 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. ACE submits that

the ongoing dialogue between Ministry and stakeholder groups with respect to any proposed regulatory amendments to the *LTCHA*, 2007, is important to further clarifying the intent and operation of the *LTCHA*, 2007, and the Regulations.

Further, ACE is pleased that the Ministry is allowing stakeholder groups an opportunity to comment on the proposed amendments. We have some concerns, however, about the mechanism by which we and other stakeholder groups are being informed of these proposed amendments to the *LTCHA*, 2007, O. Reg. 79/10 and the by means by which we are required to submit our comments to the Ministry via the Regulatory Registry. For example, there is but one option with respect to submitting comments by the due date and that is through the Regulatory Registry's website. Further, no contact information (i.e. name, email, telephone number, fax number) has been provided with respect to these proposed amendments and it is unclear who at the Ministry should be contact should stakeholder groups have any questions or inquiries. We submit that any future proposed amendments to the Regulation should be communicated widely to stakeholder groups. As well, to ensure increased accessibility, organizations/stakeholder groups should be permitted to provide their comments by more than one means. ACE submits that this will facilitate continued meaningful dialogued on these very important issues.

Of the amendments proposed by the Ministry at this time, ACE would like to provide comments with respect to the following. It is our opinion that the some of the proposed amendments do not in fact clarify the Regulation nor do they further the purpose of the *LTCHA* or its implementation. Rather, the proposed amendments may overreach and we have concerns that the rights of residents will, as a result, be negatively impacted.

Proposed Amendment to section 9 of the Regulation

ACE has concerns with respect to the description of the proposed amendment to section 9 of the Regulation.

ACE submits that it is difficult to determine with certainty that a particular door in a long-term care home is one which "residents do not have access to". Without being able to ascertain with absolute certainty that a door is situated in an area of a home that is completely inaccessible to residents, we have reservations about exempting any doors within a home from the requirements of section 9 of the Regulation. For example, those residents in a home suffering from Alzheimer's and/or dementia could inadvertently wander through a door that is exempted from requirements under section 9. In the event that the door is not closed and locked, and equipped with an audible door alarm as per section 9 of the Regulation, this may put some of the most vulnerable residents in a home at risk.

ACE submits that prior to making any amendment to section 9 of the Regulation allowing for exemptions, there needs to be further language in the Regulation clarifying how to determine with certainty that a particular door within a home is one that residents do not have access to; whether it be advertently or otherwise.

Proposed Amendment to section 97 of the Regulation

ACE submits that issues may arise where there is a blanket exemption of the licensee from the requirement to notify the substitute decision-maker or person specified by the resident where there is an allegation of abuse and the alleged abuser is either the substitute decision-maker or specified person. Our interpretation of the proposed amendment to section 97 is that it would exempt licensees from notifying substitute decision-makers and/or a person specified by the resident of any allegations as well as the results of the investigation where the licensee does not intend to speak to these individuals as part of the investigation.

We agree that a licensee should be exempt to some degree from notifying the substitute decision maker/specified person where this individual is the alleged abuser when the licensee initially becomes aware that there is an allegation or suspicion of abuse and then proceeds to notify either the Ministry or the police of such an allegation. We understand that this may be necessary in order to ensure that the investigation is not compromised in any way by providing notice to the alleged abuser too early in the process. ACE submits, however, that at some point during the course of the investigation, disclosure of information the alleged abuser is necessary for reasons of transparency and procedural fairness.

In particular, ACE is concerned about situations where one family member may make allegations of abuse of a resident as against another family member, substitute decision-maker or person specified by the resident where there may be a history of conflict between these individuals. If it is the case that the licensee has no intention of speaking with that alleged abuser during the course of the investigation, that person would receive no notification of the allegations or the results of the investigation; thereby not providing them with any opportunity to respond. Completely exempting the licensee from the requirement to notify a substitute decision-maker or the person specified by the resident in the above mentioned circumstances could be detrimental in these situations where there may be existing conflicts between family members/substitute decision-makers/POAs/persons specified by the resident to receive information and could exacerbate these complicated family conflicts/dynamics.

Where allegations of abuse of the resident arises, the determination of whether the licensee is exempt from the requirement to notify particular individuals and whether at some stage during the investigation this exemption no longer applied must be assessed on a case by case basis to preserve the integrity of the investigation but also balance the important principle of procedural fairness. ACE submits that the proposed amendment to section 97 of the Regulation does not go far enough to clarify the responsibilities of licensees in this regard.

Proposed amendment to section 110(6) of the Regulation

The proposed amendments require that section 110(6) include a clarification that this provision does not prohibit the use of bed rails as a physical restraint.

ACE submits that it is not necessary to amend section 110(6) of the regulation to include such a provision. It is our submission that section 110(6) as it is currently drafted does not prohibit bed rails as a physical restraint provided that the necessary requirements under the *LTCHA, 2007* and Regulation are followed. Rather than amending subsection 110(6) of the Regulation to clarify that this provision does not prohibit the use of bed rails as a physical restraint, ACE submits that what is required is more education for licensees and staff at homes so that they understand what their duties and responsibilities are around obtaining the necessary consents and following the procedures in the Act and the Regulation, before taking any action that would restrict the movement of a resident.

Section 110(6) of the regulations as they are currently drafted sets out the limited condition under which section 31 of the Act would allow for a resident to be restrained in bed; that being: “to allow for a clinical intervention that requires the resident’s body or a part of the resident’s body to be stationary”. How that restraining is carried out must be in accordance with the other requirements of the legislation and where possible, informed consent must be obtained from the resident and his/her substitute decision-maker. If bed rails are being used in accordance with the conditions set out currently in 110(6), then it is not in contravention of the regulations.

We are concerned that the description of the proposed amendment to section 110(6) of the Regulation suggests that bed rails are NOT PROHIBITED from being used as a physical restraint; thereby making it seem that they can be used even outside of the scope of what is permitted in the *LTCHA, 2007* and Regulation.

Conclusion

Thank you for the opportunity to provide comments with respect to the proposed amendments to O. Reg. 79/10 under the *LTCHA, 2007*. 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, 2007* 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: hoc@lao.on.ca.

Yours very truly,
ADVOCACY CENTRE FOR THE ELDERLY

Clara Ho
Staff Lawyer