Ontario Health Coalition
Bill 140 - Ontario's New Long Term Care Act
Preliminary Summary & Comments
November 25, 2006

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Background:

Currently there are 49,700 nursing home beds of which about 10,200 are non profit. Currently there are 24,700 homes for the aged and rest homes beds of which 16,700 are public (municipal) and the rest are non profit (8,000). (Total figures: 39,500 for profit, 18,200 non-profit, 16,700 public.)

These beds are governed by three Acts: The Nursing Homes Act, The Charitable Institutions Act, and The Homes for the Aged and Rest Homes Act. Under the Harris government, the Red Tape Commission recommended that the three existing Acts be rolled into one. Since then, there have been reports that the Ministry of Health and Long Term Care has been drafting a new Act.

Bill 140 - An Act Respecting Long Term Care Homes is the new Long Term Care Act which repeals the three existing acts and replaces them.

Summary & Comments

Part I

Fundamental principle - that the Act be interpreted based according to the principle that LTC homes are the homes of their residents and are to be operated so residents can live in dignity and security, safety and comfort.

Rest of section is definitions.

Comments

- *Fundamental Principle is to be used in interpretation. In the former Acts, the fundamental principle included that the physical, psychological, spiritual, cultural and social needs of the homes' residents are adequately met. This is now removed.*
- *No fundamental principle that people have the right to access the care that they need.*
- *There are potential regulations under many sections of the legislation. However, there is no process required for consultation on the regulations as there is in Bill 36, for example.(See appendix.) The government should balance its powers to regulate with an obligation to consult on regulations.*
- *There is no definition of neglect. This is needed as neglect is punishable.*

Part II

Residents' Bill of Rights -

Rights to protection from abuse and neglect.
Rights to participation and knowledge of care plans and decisions re. discharge, admission or transfer. Right to have information about transfers and hospitalization given to person of their choice immediately.
Rights to give or refuse consent to treatment.
Rights to privacy of records.
Right not to be restrained exc.under provisions of the act.
Rights of citizens.
Rights to any visitors.
Right to have family and friends if dying or very ill 24 hours/day.
Right to raise concerns and make recommendations without interference and fear of reprisal.
Right to have relationships, lifestyle choices respected, meet privately with people.
Right to participate in Residents' Council.
Right to pursue interests, develop potential.
Right to be informed in writing of any law, rule or policy affecting their services and the procedures for initiating complaint.
Right to manage own financial affairs unless the resident lacks the legal capacity to do so.
Right to access protected outdoor areas.

Comments:

- *Licensees are to ensure that these rights are respected and promoted. Enforcement is*

written in subsection (3) as: a resident may enforce the rights against the licensee as though they had entered into a contract. There is no access to enforcement of these rights by family members or other advocates (particularly a problem with respect to the rights identified for those who are dying). In addition, there are no penalties included for the facilities that do not protect these rights so it is not clear what teeth this Bill of Rights would have, if any. The Bill of Rights is similar to previous Acts. Cabinet may make regulations governing how the Bill of Rights shall be respected and promoted. There is no consultation process required for the regulations.

- *There is no right to care – no access issues dealt with here. There are no obligations for government to measure and provide for population need, to report its progress on this, etc.*

4. Mission Statement - every facility must have a mission statement, developed in conjunction with the family and residents' councils and volunteers, subject to review every 5 years, that is consistent with the fundamental principle of this Act and the Bill of Rights in it.

Comments:
- *There should be a provincial standard for these mission statements with allowance for each home to make additions reflecting the unique character of that home.*

5. Safe and Secure Home - facility must be safe and secure.

Comments:
- *In addition to protections for residents, the Act must also ensure that facilities are safe for staff who have a high rate of illness, accident and injury in this sector.*

6. Plan of Care - every resident must have a plan of care including its goals and clear direction to staff, based on assessment of the resident and the needs and preferences of the resident, and documentation of the evaluation of the plan, outcomes, provision of the care. Plans to be reviewed: every three months; when goals are met; if plan is not effective, or; when care needs change. The facility must ensure that care plans and assessments are integrated and that care follows the plan. The plan must be explained to the resident or designate subject to Personal Health Information Protection Act, 2004.

Comments:
- *Care is defined as treatment and interventions. No definition of interventions.*
- *There is no obligation of the Ministry to fund to assessed level of need. All obligations listed here are for the licensee.*
- *The assessment system will be in the regulations.*

7. Care and Services - facilities must ensure that there is an organized program for nursing, for personal support services, and for restorative care to meet the assessed needs of the residents. They must also ensure there are organized programs of recreational and social activities to meet assessed needs and interests of residents, a volunteer program, dietary services, nutrition and hydration, and medical services to meet needs. These programs must meet outcome standards as set out in regulations.

All facilities must have at least 1 RN on duty 24/7 except as provided in regulations. (This can include an Administrator or Director of Nursing and Personal Care.)

Comments:

- *This section allows for the regulations to determine whether the Administrator or Director to be considered the RN on duty if the regulations allow for it.*

Facilities must be clean and sanitary with furnishings and equipment in good state of repair. Residents' linen and personal clothing must be collected, sorted, cleaned and delivered.

Prevention of Abuse and Neglect -
Facilities must protect residents from abuse by anyone and from neglect by facility or staff. Must put in place a zero tolerance policy, communicate it regularly and implement it including: program for prevention; duty to make mandatory reports; procedures for investigation and response; consequences. There may be regulations regarding these.

Comments:

- *Note again: no definition is given for neglect.*
- *The zero-tolerance and reporting policies should conform to a minimum standard across the province, with allowance for additions to fit the context of the particular home.*

19 -21. Reporting and Complaints -
Facilities must have written policies that comply with regulations re. initiation of and response to complaints. All written complaints to be forwarded to the Director at the Ministry, immediate investigations must be done for abuse or neglect and anything else in the regulations, results of investigations must be sent to Director, responses must comply with regulations. All documentation sent in re. these shall be as per regulations.

Comments:

- *There should be a complaints process that allows residents, family and advocates to complain to a third party that is not the facility operator. In this bill there is a provision for very serious complaints to go directly to the Director (in the Ministry) but others go to the facilities. We have called for the institution of an elder-care ombudsperson who can receive and process complaints. Simply instituting a 1-800 number for complaints is not a good model since few know about it and we have received complaints that calls are not answered.*

22. Mandatory reporting for staff and facility, also physicians, social workers and health professionals, of treatment that results in harm, abuse or neglect, unlawful conduct that risks harm, misappropriation of residents' money, misappropriation of funding. These reports are to be made to the Director.

All can be found guilty of an offense if they do not make the report. All are guilty of an offense if they coerce, intimidate or authorize, permit or concur in suppressing a report.

This does not abrogate solicitor-client privilege.

The Director shall have an inspector conduct an inspection or make inquiries if they receive information of:

- improper or incompetent treatment that resulted in or risked harm to a resident
- abuse or neglect of a resident by facility or staff that resulted in or risked harm to a resident
- unlawful conduct that resulted in or risked harm to a resident
- violation of whistle-blower protection (section 24)
- misuse or misappropriation of residents' money
- misuse or misappropriation of funding
- failure to comply with a requirement under this Act
- any other matter in regulations

Inspector shall immediately visit the facility if there is improper or incompetent treatment, abuse, unlawful conduct or violation of whistle-blower, or any other matter in regulations.

Director shall have inspector conduct inspection or make inquiries if they receive information that raises concerns on reasonable grounds about risk of harm. Director may exercise any power of an inspector and has power of inspector to obtain a warrant. If the information does not warrant an inspection, the Director may disclose a complaint to the licensee, Residents' or Family Councils.

Comments:

- *Inspectors should be mandated to talk to residents, families and staff at the homes, not just administrators.*
- *Everybody needs to know how to make a report to the Director if they are required to do so. This means that contact information etc. must be posted and given to all affected.*
- *The Director may disclose a complaint to the Councils but is not required to do so. We called for the Councils to receive copies of complaints excluding personal/identifying information.*

24. Whistle-blowing protection

Prohibits retaliation or threat by action or omission because of disclosure to an inspector or the Director, or evidence in a proceeding in respect to the enforcement of this Act or the regulations, or in a Coroner's Inquest. Retaliation includes but is not limited to dismissal, discipline, penalty, intimidation, coersion, or harassment. No discharge, change of service, or discrimination against residents for same. No threats to family members, substitute decision-makers or persons of importance to residents for same. No facility operators or management or staff may discourage reporting or reward failure to report. Every person is guilty of an offense if they do these things. Those reporting to the Inspector and Director are protected from legal action unless they have acted "maliciously or in bad faith".

Staff may pursue complaints about employers under this section through binding arbitration under the collective agreement or with the Labour Relations Board.

Comments:

- *Staff that whistle-blow can still lose their jobs and will have to grieve to get them back.*

This is a significant financial barrier to whistle-blowing. We are looking for improved language from other legislation containing whistle-blowing protection to recommend for this section.

- *Page 24 - 25. There is a section here on complaints filed under the Labour Relations Board referencing the Labour Relations Act 1995. Analysis of this is not included here.*
- *Proactive mandatory education similar to models used to prevent harassment and family abuse should be instituted.*
- *There should be a pro-active duty of operators to provide a living and working environment that is respectful and free of fear. Gag orders and other such clauses in employment contracts must be unlawful, and this must be enforceable. Facility operators who hastily fix up facilities because they are tipped off about inspections prior to the inspector's visit must face penalties.*

27. Minimizing of Restraining

Every licensee shall ensure that there is a written policy to minimize restraining, that restraining is done in accordance with this Act and regulations, and that the policy is enforced. No restraints for convenience; discipline; physical devices, chemicals or barriers except as allowed. A list of things that are not restraints follows this. Restraints are allowed if in the plan of care under a set of conditions in the Act.

Comments:

- *Section 28(4) states that "the administration of a drug or pharmaceutical agent to a resident as a treatment set out in the resident's plan of care is not restraining the resident." There is some concern that this exempts some chemical restraints from being treated as chemical restraints for the purposes of this legislation. We have received complaints that there is not informed consent used in some cases. This provision should be amended to provide greater protection for residents from the overuse of chemical restraints. In our response to the Ministry's discussion paper we called for the following: "Chemical restraints are the most worrying because they are invisible to visiting family members. The ICES report, on the outrageous number of LTC home residents being given anti-psychotic drugs, should be seen as an urgent alarm signal. The administration of such drugs without the informed consent of either the resident or the substitute decision-maker must be absolutely forbidden."*

35. Office of the Long Term Care Homes Resident and Family Advisor

The Minister may establish this to assist and provide information; advise the Minister; other functions in the regulations.

Comments:

This is a significantly weaker than the creation of an elder-care ombudsperson who would be mandated to receive and process complaints.

36. Regulations

Cabinet may make regulations including: establishing standards or outcomes that must be met; classification system for care requirement assessment; mission statements; plans of care; more RNs for certain classes of homes; clarifying misappropriation and misuse of residents' money

and funding sections; anything else already listed.

Comments:

- *It appears that under this section the government could establish staffing standards in the regulations. This is a key issue and we need to win a clear assurance that they will bring in these care standards.*
- *We have called for: A province-wide minimum staffing standard that ensures sufficient hands-on staff to provide a minimum of 3.5 hours per day of nursing and personal care per day per resident. This is to reach the goal of prevention of risk, it is not an optimum. Increases in staffing should be shared proportionately among all members of the health care team. The government must fund and set standards for specialty units or facilities for persons with cognitive impairment who have been assessed as potentially aggressive, and staff them with sufficient numbers of appropriately trained workers.*

37. Admissions

The Minister shall designate placement coordinators in geographic areas, as per regulations. Eligibility for admission, applications, and some assessment details will be in regulations. If the coordinator determines the person is eligible, they shall be informed of the process, their choices and the implications of these. If the person is deemed ineligible they shall be notified and referred to alternative services as appropriate and shall be given notice in writing of the determination of ineligibility, the reasons, and their right to apply to the Appeal Board for a review.

An applicant may apply to the homes they select, as per regulations regarding consent to disclosure of information. Licensees shall accept approved applicants unless they lack the physical facilities, nursing expertise or other circumstances provided for in regulations. This refusal must be given in writing.

The licensee and the resident must consent to the admission and the coordinator must approve it.

Comments:

- *There appears to be nothing here that gives people a right to access long term care, nor the obligation for the government to provide it.*
- *The facilities are obliged to take approved applicants unless they lack facilities or nursing expertise to provide for their care needs, or other circumstances in the regulations.*
- *It is not clear if the geographic areas referred to here might be the LHINs. Given the size of the LHINs, we want to ensure that people can access the care they need close to their home communities.*
- *There are a number of subsections dealing with reassessments, secure units, suspension of admissions where there is risk of harm, veterans etc. These are technical and beyond the scope of this summary.*
- *There needs to be a clear standard to prevent the offloading of patients from acute-care facilities to long term care homes that are inadequately staffed to provide appropriate care.*
- *In our response to the Ministry's discussion paper, we have also called for the following:*

"Greater dignity and discretion is required for people seeking placement in long term care facilities. Freedom of choice is an essential principle in all settings. Homecare should be an accessible choice."

- *A ratio of 60% of facility beds for non-preferred accommodation and 40% for preferred accommodation should be reinstated.*
- *In addition to priorities currently in effect (our understanding is that, in addition to re-uniting eligible spouses, priority is also given to those who have temporarily accepted beds inappropriate to their ethnic and linguistic preferences) priority status for admission to a home among the three that a prospective resident has chosen should be extended to: those who have been heavily pressured by an acute-care hospital to accept an empty bed in a home they have not chosen, and ; those who are living on Guaranteed Income Supplement, who cannot afford to pay privately to supplement inadequate public homecare or access an accredited retirement home.*

51. Appeals
Notification to the parties at least seven days before the hearing. Placement Coordinators must notify the Minister of appeals, and the Minister is entitled to be heard. Reasonable notice shall be given for taking evidence. Hearings shall be recorded and transcripts provided.

The Appeal Board may affirm, rescind, refer or replace the decision of the coordinator within one day of the hearing, with written notice within seven days.

Appeal Board decisions may be appealed to Divisional Court on a question of law or fact.

Divisional court may affirm, rescind, refer or replace the decision.

There may be regulations for this section.

Comments:

- *There is no provision for aid to get a person to an appeal except that a person, with a doctor's note, who is unable to attend due to age, infirmity or physical disability may have the Appeal Board visit and take evidence from them. No help for financial or travel barriers here.*

PART IV COUNCILS

54. Residents' Council
Licensees shall ensure that a residents' council is established and an acceptable assistant to the council is appointed. Residents and substitute decision-makers may be members. Staff, facility operators and management are not entitled to be members.

Powers: advise residents of their rights; resolve disputes between licensee & residents; activities; recommendations; review inspection reports and funding allocations; financial statements; anything in the regulations.

57. Family Council
Licensees shall assist in the establishment of a Family Council within 30 days of receiving a request from a family member, person of importance to a resident or former resident. These people or community members (excluding those in a contractual relationship with the Ministry, or a licensee including managers, controlling interest investors and board members) may be members.
The Director, or anyone else provided for in the regulations must be notified of the establishment of a Family Council.

Powers:
Same as Residents' Council.

The Licensee has a duty to respond to recommendations and concerns within 10 days.

General:
Licensees shall cooperate with Councils; provide information; attend meetings when invited; not interfere; consult. There may be regulations under this section.

Councils:

- *These rights must be more robust. Though the facilities are obliged not to interfere, there is no right to meet in private, be given board minutes, be given copies of regulated standards, have a voice at appeals, get other documents, speak to inspectors etc.*
- *It is also a problem that the setting up of the councils rests with the facility operators themselves. An arms-length third party must receive funding to be able to effectively establish and assist in maintaining the councils. In our response to the Minister's consultation paper we called for funding and support to flow through an elder care ombudsperson's office and/or through Concerned Friends or the Advocacy Centre for the Elderly. We also called for a social worker who is not employed by any facility to help set up the councils. It is imperative that the independence of the councils from the facility operators be established and maintained.*
- *Homes may or may not have family councils.*
- *We have received reports that volunteers in facilities, who represent the facilities rather than the families or residents, are on the family councils. This legislation allows for this to continue. It should be clear that family members or residents' designated advocates are the only people on these councils and attending meetings, unless expressly invited.*
- *The legislation must provide for public access to information that would allow Family Councils and others to effectively hold operators accountable. Information that must be made available should include but not be limited to: financial reports on income and expenditure from all funding envelopes; reports on complaints regarding standards; level of care needs; Ministry or LHIN directives; facility funding & licensing agreements; inspection and compliance reports.*

PART V: OPERATION
Home must have an Administrator responsible for management and duties and work hours as per regulations.

Homes must have a Director of Nursing and Personal Care responsible for supervising the nursing and personal care staff and duties and work hours as per the regulations.

Homes must have a Medical Director who is a physician to advise on medical matters and duties as per the regulations.

Use of temporary, casual or agency staff is allowed as per in regulations.

Screening of staff shall include criminal reference checks and other as per regulations.

Comments:

- *Use of temporary, agency or casual staff is expressly allowed. We have consistently opposed the casualization of care staff.*
- *Section 73 (3) states that agency staff shall be considered to be hired when she or he is first allowed to work at the home. We are unclear on what this means.*

74. Training

Different sets of training are set out as minimum requirements for different types of staff and volunteers. Each of these sections includes provision for further training requirements to be in regulations.

Comments:

- *This section needs to include clear assurances of staff coverage for care during absences for training, a strong commitment to fund continuing education for direct care staff including sensitivity training around equity issues, standards and a provincial tripartite structure to oversee training and skills development. We have received many complaints about inadequate training for staff working with people moved from mental health facilities into ltc homes. Special training to address the care needs and safety concerns regarding residents with psychogeriatric issues must be included here.*

76. Residents - Information, Agreements etc.

Residents or substitute decision-makers must receive a package of information from the Licensee including:

- Bill of Rights, mission statement, zero-tolerance of abuse policy, mandatory reports requirement, policy on minimizing restraints
- Complaints procedure, telephone # of Director or contact information
- Maximum bed premiums for all types of beds, what is publicly funded, extra charges, statement that residents are not required to purchase care and certain services as per regulations
- Disclosure of any non-arms length relationships
- Information about Residents' and Family Councils
- anything required by regulations

Information required by regulations must be posted visibly or communication as per the regulations for those with visibility impairment.

Licensees shall only present regulated documents certified by a lawyer for signature by residents.

Comments:
- *Not sure what non-arms length relationships between licensees and other providers might be referenced here. Not sure why such relationships would be allowed at all.*
- *Page 57. There is a technical section regarding definitions of regulated documents, voiding, prohibition of coercion etc. here, beyond the scope of this analysis.*
- *page 58 - 61. Cabinet may make regulations on a range of items including use of drugs, psychotropic drugs, staff qualifications, training, use of temp staff, reference checks, information provided, quality management, etc. Again, note: the power of cabinet to make regulations should be balanced with a requirement to consult on the regulations as per language in Bill 36.*

82. GENERAL MANAGEMENT
Licensees must implement a quality management system, do annual satisfaction surveys as per advice of the Councils, document these, have an infection prevention and control program as per regulations, have emergency plans, test these, submit required reports. This section will be subject to regulations.

88. PART VI FUNDING
Minister may provide funding and attach conditions as per regulations.

Charges to residents for accommodation or other shall be as per written agreement and regulations.

Records and accounts shall be kept as per regulations.

Non-arms length transactions shall be allowed as per regulations.

Comments:
- *There should be a process to require a 3 year review by the standing committee regarding minimum staffing and funding to ensure care needs and standards are being met. There also must be clear minimum staffing standards in the regulations. (See also recommendations from the Auditor's Report on LTC in appendix.)*
- *Charges to residents should not exceed CPP/OAS benefit increases.*
- *Not sure what non-arms length transactions are foreseen here.*
- *Again, no obligation on government to provide access to care.*
- *We have called for: A provincial funding model that is based on a uniform assessment tool across the province to ensure that there are uniform provincial standards and funding assessment tools across all LHINs. The funding model must provide adequate funding for the required staffing standard and strong accountability as to how that money is spent.*
- *There is no clear ability for the public to gain access to information about how much money is received by the facility in each funding envelope and how much is spent.*

93. PART VII LICENSING
The Minister shall determine how many beds and where, considering the public interest, and a range of items including the number of current beds, alternative services, funds available, anything provided in the regulations, anything the Minister considers relevant.

The Minister may restrict who may be issued a license taking into account concentration of ownership, control or management of facilities in area or in Ontario; balance of for-profit to non-profit homes; any other matter in the regulations.

Eligibility for licenses determined by regulation, past conduct, compliance with the Act and regulations. The public must be consulted. Non-eligibility determinations will be served n writing, including reasons. These can be appealed to the Appeals Board.

The Director may issue a license following a determination by the Minister, and set out conditions in an undertaking which includes a non-amendable and an amendable section. The non-amendable components are: where the home will be; the number and class of beds; terms of the license; conditions of the license; other components as per regulations; anything else considered appropriate by the Director. Other matters are amendable. The Director may cancel the undertaking by serving notice of cancellation. This may be appealed to the Minister. Licenses shall not exceed 25 years. Three years before its end, the Director shall give notice that no new license will be issued or that a new license will be issued.

Licenses may not be transferred except by the Director.

A non-profit may transfer a license or beds to a for-profit in circumstances provided for in the regulations.

A number of requirements for notification of changes to corporate directors or officers, and for acquiring controlling interest in a licensee corporation. The Director's approval is required to acquire controlling interest, transfer or issue shares of capital stock that have the effect of changing ownership or controlling interest, contract-out management.

There are provisions for regulations under this section.

Comments:
- *The requirement for public consultation must be accompanied by disclosure and access for the public to information regarding the proposal and the proponent.*
- *Public consultation re. licenses under Section 104 does not require any public notice of the consultation to anyone in any format.*
- *Page 67. Presumably the non-amendable sections are guidelines set by the Ministry when negotiating the license agreements and the amendable ones are where they might change the template documents according to negotiations with the license applicants. It is not clear what types of amendable items might be in play here.*
- *Page 68. There are a number of technical sections about transferring licenses, reductions of licensed beds, appeals, location, security interests, management contracts etc., beyond the scope of this summary.*

- *Section 103 (9). It allows non-profits to transfer to for-profits as per regulations (unspecified). There is no requirement that homes be rolled back into non-profit or public control. We have expressly oppose non-to-for-profit transfers.*
- *Later in the Transition section (page 105) it is specified that non-profits with licenses will continue to have licenses, those with approved beds will continue as such. (Currently there is a mix of approved and licensed non-profits).*
- *This means that the current majority of for-profit beds will continue, with provision that more of the non-profit beds could be transferred to for-profits. We called for a strong message in support of public and non-profit provision of long term care. The legislation does not provide this and enables for further for-profit privatization.*

116. PART VIII

MUNICIPAL AND FIRST NATIONS HOMES
Southern municipalities, with the exception of Pelee Township shall establish and maintain at least one home, which may be a joint home between two or more municipalities with the approval of the Minister.

Northern municipalities are not required to establish and maintain a home. Those with populations over 15,000 may do so, and with approval from the Minister, this may be a joint home if they are in the same territorial district.

These homes must have a Board of Management which is not subject to the Corporations Act except as provided by regulation.

Comments:
- *Northern municipalities are no longer required to maintain a home. We advocated for the continuation of municipal homes to protect the continuation of public facilities.*
- *The old Act also allowed for joint homes.*

FIRST NATION HOMES
A council of a band may establish a First Nations home under this section, or establish a joint home with the approval of the Minister. A board of management shall be set up for the joint homes, similar to the municipal homes.

Comments:
- *Municipal and First Nations Homes will continue to have "approved" rather than "licensed" beds. Approved beds are not commodities. (Unlike the licensed beds that can be sold on the market as revenue streams for for-profit companies .) Approved beds are not subject to a fee charged by the Ministry to the facility operator and the Act prohibits the Ministry from introducing a fee. (Note: these are not the same as fees charged to residents for their accommodation, this relates to the relationship between the Ministry and the operators.)*
- *Section 129 sub 5 appears to state that the approval for a municipal home is not subject to the Minister determining whether or not there should be a home. This seems to mean that there can be a home in every municipality that wants one and there must be a home*

in all southern municipalities, but it may be a joint home between two or more municipalities.

GENERAL
Minister's approval necessary for establishment of any home in this section and the number of beds approved.

Approval does not expire, and the Ministry cannot charge a fee for the approval.

The Director may order renovations in a municipal home or joint home and require that order to be complied with in a certain time.

The Director may take control of a municipal or joint home and manage it with all the powers of the municipality if he/she has reasonable grounds for a maximum of one year. The Minister shall hold a hearing to determine whether this power should be exercised and a non-Ministry person shall conduct the hearing. There are a number of provisions for notice and reporting of these proceedings. This overrides specific provisions of the Expropriations Act.

Cabinet may make regulations pertaining to this section.

139. PART IX COMPLIANCE AND ENFORCEMENT
The Minister may appoint inspectors. The Director is an inspector.

Every home is to be inspected annually except if the regulations allow those with good records or certain classes of homes to be exempt. No notice shall be given for the annual inspections.

Other inspections may be preceded by notice to the facility as per the regulations.

The inspectors may inspect the homes, or the premises of a place operated in conjunction with the home or providing services to it.

The inspectors may question individuals subject to their right to have legal counsel and may dismiss anyone else.

Inspection of records is subject to the Personal Health Information Protection Act.

The inspector may get a warrant on reasonable grounds.

Inspection reports generated from the inspection shall be given to the licensee, and Residents' and Family Councils.

Anyone who hinders the inspector, destroys records or fails to provide required information or submit to questioning is guilty of an offense.

There are several stages outlined for enforcement: an inspector shall issue a written request, order, or refer to the Director; the inspector or the Director may order a licensee to comply with any requirement under this Act; the inspector or Director may order the licensee to allow employees or contractors of the Ministry to undertake any work or activity necessary to achieve compliance and withhold funding to recover costs; the Director may withhold funding up to $50 per bed; the Director may order a licensee to retain a person(s) acceptable to the Director to manage or assist in managing the home; the Director may revoke a license under specific serious grounds and occupy the facility.

Comments:

- *The Act allows homes to be exempted from annual inspection by regulation.*
- *The government must fund to ensure inspection and compliance staff are adequate for tasks outlined in this Bill.*
- *Inspectors can inspect facilities of contracted-out services, but there appears to be no requirement to do so. This is an unequal playing field as homes that do not contract out services will have these services inspected in the regular inspections.*
- *It may be that staff cannot have a union steward present for questioning. Need to check this. Section 144 (1) (d) and (4). Also, not sure of implications for families and residents.*
- *There is a list of the types of documents and records the inspector can demand in this section.*
- *There is no requirement for the inspector to talk to families, residents or staff.*
- *Residents, staff, families and councils should be added to the "parties" with access to appeal or means of challenging action or inaction by the Ministry.*
- *There is no actual requirement for the Director to pursue sanctions here, even in cases of consistent non-compliance. The Ministry should have a clear obligation to enforce standards. We have called for the following: "Program standards must be reviewed and improved and enforced through the inspection regime. More attention must be paid to homes that are non-compliant and strong and effective sanctions must be imposed on homes that are consistently non-compliant with significant care standards including non-renewal of the license to operate."*
- *Pages 94 - 95. There are specific provisions for cancelling the license and taking over the home including how it will be managed, severance for employees, changes to collective agreements etc. There are no provisions with respect to the residents and families here, though they may be covered in the section on transfers. It may be that it is not foreseen that residents would be moved out.*

160. REVIEW AND APPEALS

Licensee may request the Director review the order within 14 days in writing. Director may rescind, confirm or alter the order.

The licensee may appeal to the Appeal Board within 15 days. The parties to an appeal are the licensee and the Director. The Appeal Board may rescind, confirm or alter the order.

Appeals do not stay the orders unless the Director or Appeal Board specifies this in writing.

Either party can appeal the Appeal Board's decision to Divisional Court.

The sufficiency of funding provided to a licensee from any source shall not be considered in any review or appeal under this Part.

169. MISC.
The Director shall publish every inspection report; every order under this part; every written notice or request by the inspector.

Cabinet may make regulations under this part.

171. PART X: ADMINISTRATION, MISC AND TRANSITION
177. Every person convicted of an offence under this Act is liable for a fine of up to $25,000 and/or imprisonment of up to 12 months for a first offence. For subsequent offence a fine up to $50,000 and imprisonment up to 12 months. Except for those convicted of an offence under section 22 (mandatory reporting) where the maximum is a fine of $25,000. Plus there may be a court order for restitution or compensation.

Every corporation convicted of an offence is liable to a fine of up to $50,000 for a first offence and $200,000 for subsequent offenses. Same provision for compensation as above.

There is a whole list of things for which Cabinet may make additional regulations including but not limited to:

- definitions of abuse and neglect
- definitions of types of beds
- designating rights advisors
- definition of non and for profit
- requiring provision of certain types of care and services
- requiring standards
- governing records
- proportion of types of accommodation
- governing construction and renovations
- administration of residents' trust accounts
- limiting access to inspection reports to protect privacy of a resident
- filing and content of financial statements
- methods of service
- licensing fees, approvals, transfers and audits
- closing homes
- exemptions to the Act
- transitional matters

Comments:

- *In corporations that are chains or own more than one facility, corporate penalty should be $200,000 per facility where the offense occurs.*

180. TRANSITIONAL
Existing licenses and approvals shall be transitioned to this Act.

Terms of replacement licenses:
- new homes 25 years
- A homes - 15 years
- B homes - 12 years
- C homes - 10 years
- D homes - 10 years if upgraded, 1 year if not upgraded.
- EldCap beds up to 25 years

If more than one type of bed, the longer of the terms listed applies.

Comments:
- *Pages 106 - 110 contain technicalities relating to these license terms, reviews, etc.*

PART XI REPEALS AND CONSEQUENTIAL AMENDMENTS
This Act repeals the Charitable Institutions, Nursing Homes, and Homes for the Aged & Rest Homes Acts.

LHINs - page 111 to 113.
Bill 140 also contains a section of amendments to itself as a consequence of the passage of the LHINs Act. This includes reporting and financial statements to go to the LHIN as well as the Director at the Ministry; exclusion of LHINs personnel from family councils; inclusion of the service accountability agreements between the LHINs and the ltc facilities; amendments to recognize the LHIN as funder, and others.

Additional amendments to other Acts are not covered here.

Ontario Health Coalition
15 Gervais Drive, Suite 305
Toronto, Ontario M3C 1Y8
tel: 416-441-2502
fax: 416-441-4073
email: ohc@sympatico.ca
www.ontariohealthcoalition.ca

APPENDIX I:

Ontario Health Coalition
Comparison of Long Term Care Act (Bill 140) to
Our Key Issues in Long Term Care Homes (September 2006)
November 25, 2006

Adequate funding must be provided for ongoing supportive home and community care to offer seniors, persons with disabilities and those with chronic illnesses the opportunity to live in the community as long as possible.

✗ NOT IN THE ACT

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1) A province-wide minimum staffing standard that ensures sufficient hands-on staff to provide a minimum of 3.5 hours per day of nursing and personal care per day per resident. This is to reach the goal of prevention of risk, it is not an optimum. Increases in staffing should be shared proportionately among all members of the health care team. The government must fund and set standards for specialty units or facilities for persons with cognitive impairment who have been assessed as potentially aggressive, and staff them with sufficient numbers of appropriately trained workers.

✗ NOT IN THE ACT: THERE IS A POSSIBILITY THAT IT CAN BE INCLUDED IN A REGULATION PERTAINING TO STANDARDS BUT THE GOVERNMENT HAS NOT YET AGREED TO THIS.

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2) A provincial funding model that is based on a uniform assessment tool across the province to ensure that there are uniform provincial standards and funding assessment tools across all LHINs. The funding model must provide adequate funding for the required staffing ratio set out in #1 and strong accountability as to how that money is spent.

✗ NOT IN THE ACT: THE FUNDING AND ASSESSMENT TOOLS ARE LEFT TO REGULATION AND LICENSE AGREEMENTS AND LHINS SERVICE AGREEMENTS.

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3) The continuance of the new completely random surprise inspection regime with an adequate number of inspectors to respond to complaints within a reasonable amount of time. Any assessment process must include talking with representatives from residents' and family councils where they exist and speaking to nursing and personal care staff.

✔ANNUAL INSPECTIONS THAT ARE UNANNOUNCED ARE IN THE ACT. OTHER INSPECTIONS MAY BE PRECEDED BY NOTICE TO THE FACILITY UNDER THE REGULATIONS. HOWEVER, THE REGULATIONS MAY EXEMPT SOME HOMES FROM ANNUAL INSPECTIONS.

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4) A ratio of 60% of facility beds for non-preferred accommodation and 40% for preferred accommodation should be reinstated. No increase in out-of-pocket fees for beds beyond inflation.

✗ NOT IN THE ACT: THIS HAS BEEN LEFT TO THE REGULATIONS.

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5) All long term care facility beds receive public funding. The legislation must include strong message of support for public and non-profit delivery of care. All new capacity should be built in public and non-profit homes. Operators that transfer their licenses must transfer them to public or non-profit ownership only.

✗ NOT IN THE ACT: THE ACT IS IN OPPOSITION TO THIS. TRANSFERS FROM NON-PROFITS TO FOR-PROFITS ARE ALLOWED AS SPECIFIED IN REGULATIONS. MUNICIPALITIES IN THE NORTH ARE NO LONGER REQUIRED TO HAVE HOMES. THIS ALLOWS THE BALANCE OF HOMES TO SHIFT FURTHER TO FOR-PROFITS.

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6) Family councils should be recognized in the legislation with official recognition of their right to advocate. Families must be guaranteed access to the information required to hold facilities accountable. Complaints by family members must trigger an automatic inspection within two weeks of receipt of the complaint. In the case of abuse, the inspection must be immediate. Inspectors should be mandated to meet with family and resident councils where they exist. The Ministry should continue to provide funding and support to establish and continue family councils through the office of the elder care ombudsperson. There must be whistle-blower protection for residents, families and staff that speak out about poor practices in the homes.

✔/✗ FAMILY AND RESIDENTS COUNCILS ARE RECOGNIZED AND HAVE A RIGHT TO RAISE CONCERNS OR COMPLAINTS. NO ROLE IN APPEALS OR INSPECTIONS. COMPLAINTS TRIGGER INSPECTIONS IN PARTICULAR CIRCUMSTANCES. IMMEDIATE INSPECTION IN CASES OF ABUSE IS IN THE ACT. NO FUNDING FOR RESIDENTS AND FAMILY COUNCILS IN THE ACT. NO OMBUDSPERSON. THERE IS WHISTLE-BLOWER PROTECTION IN THE ACT.

---

7) There must be clear and enforced guidelines in the legislation limiting the use of physical, chemical and environmental restraints on residents. Restraints should only be used for the purpose of preventing harm. There must be a clear decision-making process, notification of families, and restraints-as-last-resort policies.

✔THIS IS IN THE ACT. THERE IS, HOWEVER, SOME CONCERN THAT CHEMICAL RESTRAINTS ARE NOT TREATED THE SAME AS PHYSICAL RESTRAINTS AND ARE NOT RECOGNIZED AS RESTRAINTS IF THEY ARE SET OUT IN THE RESIDENT'S CARE PLAN.

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8) Program standards must be reviewed and improved and enforced through the inspection regime set out in #3. More attention must be paid to homes that are non-compliant and strong and effective sanctions must be imposed on homes that are consistently non-compliant with significant care standards including non-renewal of the license to operate.

✔/✗ THERE ARE POTENTIAL SANCTIONS FOR NON-COMPLIANT HOMES. THERE IS NO OBLIGATION FOR THE MINISTRY TO PURSUE SANCTIONS FOR PERSISTENTLY NON-COMPLIANT HOMES.

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9) The training opportunities for front-line staff, administrators, and Compliance Advisors must be improved to ensure consistency and an understanding of how to provide residents and staff a safe, secure and compassionate environment.

THERE ARE TRAINING PROVISIONS IN THE ACT, HOWEVER, THEY NEED TO BE IMPROVED TO COVER EQUITY ISSUES AND PHSYCOGERIATRIC ISSUES, AMONG OTHERS.

10) Consultation on adequate regulation of retirement homes should be instituted.

✗ NOT IN THE ACT.

APPENDIX II:

Consultation Process for Regulations from Bill 36

Public consultation before making regulations

38. (1) Subject to subsection (8), the Lieutenant Governor in Council or the Minister shall not make any regulation under this Act unless,

(a) the Minister has published a notice of the proposed regulation in *The Ontario Gazette* and given notice of the proposed regulation by all other means that the Minister considers appropriate for the purpose of providing notice to the persons and entities who may be affected by the proposed regulation;

(b) the notice complies with the requirements of this section;

(c) the time periods specified in the notice, during which persons may make comments under subsection (2) have expired;

(d) the Minister has considered whatever comments that persons have made on the proposed regulation in accordance with subsection (2) or an accurate synopsis of the comments; and

(e) if the Lieutenant Governor in Council may make the regulation, the Minister has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate.

Contents of notice

(2) The notice mentioned in clause (1) (a) shall contain,

(a) a description of the proposed regulation and the text of it;

(b) a statement of the time period during which any person may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;

(c) a statement of where and when any person may review written information, if any, about the proposed regulation; and

(d) all other information that the Minister considers appropriate.

Time period for comments

(3) The time period mentioned in clause (2) (b) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4).

Shorter time period for comments

(4) The Minister may shorten the time period if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations made under it; or

(c) the proposed regulation is of a minor or technical nature.

Discretion to make regulations

(5) Upon receiving the Minister's report mentioned in clause (1) (e), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister's report.

Same, Minister's regulations

(6) If the Minister may make the proposed regulation and the conditions set out in subsection (1) have been met, the Minister, without further notice under that subsection, may make the proposed regulation with the changes that the Minister considers appropriate.

No public consultation

(7) The Minister may decide that subsections (1), (2), (3), (4), (5) and (6) should not apply to the power to make a regulation under this Act if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations made under it; or

(c) the proposed regulation is of a minor or technical nature.

Notice

(8) If the Minister decides that subsections (1), (2), (3), (4), (5) and (6) should not apply to the power to make a regulation under this Act,

(a) those subsections do not apply to the power to make the regulation; and

(b) the Minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision.

Contents of notice

(9) The notice mentioned in clause (8) (b) shall include a statement of the Minister's reasons for making the decision and all other information that the Minister considers appropriate.

Publication of notice

(10) The Minister shall publish the notice mentioned in clause (8) (b) in *The Ontario Gazette* and give the notice by all other means that the Minister considers appropriate.

No review

(11) Subject to subsection (12), no court shall review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the Minister under this section.

Exception

(12) Any person resident in Ontario may make an application for judicial review under the *Judicial Review Procedure Act* on the grounds that the Minister has not taken a step required by this section.

Time for application

(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which the Minister publishes a notice with respect to the regulation under clause (1) (a) or subsection (10), if applicable.

APPENDIX IV:

Recommendations of the Provincial Auditor

Below are two sets of recommendations and reports from the provincial auditor. The first is from the 2002 audit. It is the summary of Audit Conclusions. The full report can be accessed here:

www.auditor.on.ca/en/reports_en/en02/304en02.pdf

The second is from the 2004 update. It gives the recommendations from the 2002 report and the Ministry's responses. The full report can be accessed here:

www.auditor.on.ca/en/reports_en/en04/404en04.pdf

OVERALL AUDIT CONCLUSIONS (2002 Auditor's Report)

In certain significant respects, the Ministry did not have all of the necessary procedures in place to ensure that long-term-care resources are managed with due regard for economy and efficiency and that long-term-care facilities are complying with applicable ministry policies. A number of our concerns were also reported in our 1995 Annual Report. In particular, we noted:

• The Ministry had still not developed either standards to measure the efficiency of facilities in providing quality care or models for staff mixes for providing nursing and personal care and, therefore, did not have a sufficient basis for determining appropriate levels of funding. In addition, the Ministry had not addressed the results of a 2001 consulting report that noted that residents of Ontario's long-term-care facilities "receive less nursing and therapy services than [those in] similar jurisdictions with similar populations."

• Although the Ministry inspected all long-term care facilities in 2001, it did not have a risk-based approach for prioritizing its facility inspection procedures, such as conducting in-depth inspections of facilities with a history of failing to meet provincial quality-of- care standards.

• Some regions lacked advisors, such as dieticians, who could provide specialized advice. For instance, in facilities that they inspected, dieticians found higher incidences of unmet dietary criteria—such as unsanitary procedures in the kitchen and lack of appropriate nutrition—than compliance advisors found.

• The Ministry was not adequately tracking complaints, unusual occurrences, and outbreaks of contagious diseases to identify and resolve systemic problems. In 2001, of seven regions, only two regions recorded unusual occurrences, which totalled 1,900. In the same year, only four regions recorded outbreaks of contagious diseases, which totalled 219 and affected 7,500 residents and staff.

• Contrary to legislation, none of the nursing homes in Ontario had current ministry- issued licences at the time of our audit. At least 15% of licences had expired more than one-and-a-half years ago. As well, most nursing homes that opened after 1998 had never been issued a licence.

• Surplus funds were not being recovered from facilities on a timely basis because the

Ministry was performing annual reconciliations almost two years after the applicable year-end. The delayed recovery of approximately $50 million for the 1999 calendar year resulted in approximately $5 million in interest expenses being passed on to the taxpayers.

Since our previous audit in 1995, the Ministry has established a target for the number of long-term-care beds required and has implemented a strategy to cope with the increasing demand for beds arising from the growing elderly population. However, the Ministry did not have a process in place for periodically reviewing whether its target of 100 beds per 1,000 individuals aged 75 and over was appropriate.

Through the long-term-care redevelopment project, the Ministry allocated funding to build new long-term-care facilities in regions of the province where the need for additional beds was the greatest and was providing financial assistance to facilities that do not meet minimum structural and environmental standards.

Finally, we concluded that the Ministry's procedures for providing adequate accountability to the public and ensuring that long-term-care facilities provide services efficiently and effectively were impaired because:

• Financial information submitted by facilities was not sufficient to allow the Ministry to determine whether funds had been used in accordance with the Ministry's expectations.

• The Ministry had not developed outcome measures that addressed the appropriateness of services provided, including the quality of care received by residents.

CURRENT STATUS OF RECOMMENDATIONS (2004 Auditor's Follow Up)

According to information obtained from the Ministry of Health and Long-Term Care, some progress has been made on implementing the recommendations in our *2002Annual Report*. The current status of action on each of our recommendations is as follows.

MONITORING QUALITY OF CARE

Annual Inspections

Recommendation

To help ensure that long-term-care facilities meet the assessed needs of each of their residents, the Ministry should:

•ensure senior management assesses the results of annual facility inspections for possible corrective and preventive action;

•implement a formalized risk-assessment approach for its annual inspections that concentrates on facilities with a history of non-compliance and prioritizes inspection procedures;

•ensure consistency in the application of standards;

•establish acceptable notification periods and conduct surprise inspections of high-risk facilities to reduce the risk that facilities will "prepare" for an inspection; and

•evaluate the experience and skills required to inspect facility operations and ensure the appropriate mix of specialists is available.

Current Status

The Ministry informed us that the following actions had been taken with respect to ourrecommendation at the time of our follow-up:

•Regional Directors were assessing inspection results for corrective and preventative actions where required.

•In addition, in February 2003, a Corporate Enforcement Unit—with the responsibility of monitoring high-risk facilities and co-ordinating the Ministry's enforcement activities—was created. The Ministry also indicated that improvements had been made in formalizing a risk-based approach for annual inspections.

As a first step in the development of a risk management framework, a preliminary exercise was conducted to screen all long-term-care facilities using a standard set of risk indicators in order to identify those long-term-care facilities that would require enhanced risk reviews. The enhanced risk reviews for all facilities thus identified were completed in June 2004. According to the Ministry, ongoing work will be done on the risk management framework in order to improve its effectiveness, and the framework will be used on a continual basis.

•Care program and service standards were being redrafted to ensure consistency in application. All ministry Compliance and Enforcement staff were to receive training based on the new standards, and an information system to support standardized compliance reporting was being tested.

•Effective January 1, 2004, all compliance inspections and investigations were being conducted without advance notice to the facility.

•Regional Directors were ensuring that compliance and enforcement staff had the appropriate experience, skills, and qualifications. The Ministry was also strengthening a multi-disciplinary approach to inspections involving registered nurses, registered dieticians, and environmental specialists.

Health and Safety of Residents

Recommendation

To better protect the health and safety of residents of long-term-care facilities, the Ministry should ensure that all:

•complaints are investigated and responded to in a timely manner;

•unusual occurrences and outbreaks of contagious infections are reported to the Ministry and recorded in its Facility Monitoring Information System on a timely basis; and

•complaints, unusual occurrences, and outbreaks of contagious infections are assessed in relationship to annual facility inspection results to identify and resolve systemic problems.

Current Status

In addition to the regular channels through which the Ministry receives complaints, atoll-free number (1-866-434-0144) was established to receive and register complaints and comments regarding long-term-care residents and facilities. According to the Ministry, an initial response standard of two business days is in place and will be maintained.

According to the Ministry, all facilities had begun recording all unusual occurrences inthe Facility Monitoring Information System by June 2002. All regions began recording these occurrences on a monthly basis in 2003. By March 2004, all regions had begun recording outbreaks of contagious diseases in the system.

The Ministry advised us that it was analyzing the information stored in the Facility Monitoring Information System to better identify and resolve any systemic problems. In addition, to ensure that infection control systems are in place and to prevent future recurrences, ministry staff review complaints, unusual occurrences, and outbreaks(including contagious infections) as part of the annual review process for each facility.The Ministry had also issued SARS directives for long-term-care facilities and standards for comprehensive infection control programs for certain respiratory illnesses in non-acute-care institutions such as long-term-care facilities.

Facility Licences and Service Agreements

Recommendation

To help ensure that ministry policies and legislation regarding long-term-care facilities are followed and that long-term-care service providers understand their responsibilities, the Ministry should ensure that all long-term-care facilities have valid service agreements and that each facility's compliance status is taken into account.

Long-Term Care Facilities Activity 385 Follow-up Section 4.04

The Ministry should also ensure that all nursing homes have valid licences as required by legislation.

Current Status

The Ministry indicated that service agreements covering the year 2004 were distributed to facility operators in January 2004 for execution.

The Ministry also indicated that all licences were current and remained up to date and that ongoing renewals occur throughout the year.

PER DIEM FUNDING

Level-of-care Classifications

Recommendation

To help ensure fairness in the levels of funding provided to long-term-care facilities, the Ministry should adjust funding where warranted as a result of any level-of-care classification audit in accordance with its policy.

Current Status

According to the Ministry, since April 2003 a policy has been in place whereby funding is adjusted upward or downward where warranted as a result of level-of-care classification audits.

Reasonableness of Per Diem Funding

Recommendation

To help ensure that the funding provided to long-term-care facilities is sufficient to provide the level of care required by residents and that the assessed needs of residents are being met, the Ministry should:

•verify the reasonableness of the current standard rates for each funding category and develop standards to measure the efficiency of facilities providing services;

•track staff-to-resident ratios, the number of registered-nursing hours per resident, and the mix of registered to non-registered nursing staff and determine whether the levels of care provided are meeting the assessed needs of residents; and

•develop appropriate staffing standards for long-term-care facilities.

Current Status

In August 2002, the Ministry announced a $100-million increase to the nursing and personal care funding envelope; and on July 1, 2003, it increased funding to

long-term-care facilities by an additional $100 million across all funding envelopes to"improve resident care, programming and overall quality of life."

The Ministry advised us that in March 2003 it distributed a survey to determine how each facility spent the August 2002 $100-million increase. The results of the survey have been posted on the Ministry's Web site and indicated that the facilities increased their staffing and care levels, time spent with residents, and quality programming. The Ministry also indicated that the appropriate level of funding is determined by the annual classification assessments that identify residents' level-of-care requirements. Each year funding is adjusted according to changes in the resident population's care requirements.

The Ministry also indicated that, while it funds facilities using a resident-needs-based funding formula, facility operators are required to ensure staffing mixes and patterns are sufficient to meet the needs of residents. Nevertheless, the Ministry informed us that to enhance its ability to assess resident care and staffing needs and to identify resource requirements, it was reviewing the implementation of the common assessment instrument, known as the Minimum Data Set.

As for the development of staffing standards, the Ministry informed us that, commencing in 2004, it had strengthened the reporting requirements in service agreements. The 2004 service agreement introduced a provision that enables the Ministry to request that facility operators provide information regarding levels of service, staffing, and any other matter relating to the operation of a facility. The Ministry further stated that during annual reviews and other inspections, compliance staff monitor and evaluate staffing patterns of facilities. The means of evaluating staffing patterns include:

•determining staff deployment using a tool that captures numbers of all registered and non-registered staff in all resident floors and/or care areas;

•assessing in depth the care needed by and provided to residents using a standardized provincial assessment

tool that gathers the relevant information;

•*observing resident grooming, positioning, call-bell access, and so on, by walking through all resident areas; and*

•*reviewing call-bell response times.*

Annual Reconciliations

Recommendation

To help ensure surplus funding to long-term-care facilities is accurately identified and returned to the province on a timely basis, the Ministry should ensure that:

•*audited financial information provided by facilities meets ministry needs; and*

•*reconciliations are completed and surpluses recovered on a timely basis.*

Current Status

The Ministry indicated that it reviews each year the audited annual reconciliation report submitted by each facility to ensure that it is meeting the Ministry's needs. The Ministry also indicated that—in response to a report from the Parliamentary Assistant to the Minister of Health and Long-Term Care—it is planning a funding and accountability review of the Long-term Care Facility Activity.

According to the Ministry, the annual financial reports for 2002 were reconciled by December 31, 2003, and surplus funding for ineligible items was recovered. The Ministry also indicated that annual financial reports for the year 2003 would be reconciled by December 31, 2004.

THE LONG-TERM CARE REDEVELOPMENT PROJECT

Supply of Long-term-care Beds

Recommendation

To help ensure that the need for long-term-care beds is met on a timely basis, the Ministry should:

•*conduct research to determine whether its target of 100 beds per 1,000 individuals aged 75 and over is appropriate; and*

•*develop a strategy to address the results of the research.*

Current Status

According to the Ministry, at the time of our follow-up policy work was being conducted on a Seniors Health Strategy, which "will review the full range of services available to seniors and make recommendations about programmatic responses."Completion of the Strategy was scheduled for the summer of 2004.

Capital Redevelopment Plan

Recommendation

The Ministry should ensure that the per diem paid to long-term-care facilities for capital construction are consistent with the actual construction costs incurred.

Current Status

The Ministry indicated that it had developed and implemented guidelines for consistent review and approval of audited statements of final capital costs that are submitted by facility operators. The Ministry also indicated that it was closely monitoring and following up with facility operators in order to ensure that the per diems paid to facilities (over a 20-year period) to cover the cost of capital construction are consistent with the actual construction costs incurred.

ALLOCATION OF NEW BEDS

Recommendation

To help demonstrate that awards for new long-term-care beds are based on a fair and open process that is consistently and objectively applied, the Ministry should ensure that the justification for all decisions is properly documented.

Current Status

The Ministry indicated that it would ensure that the justification for all decisions isproperly documented.

Structural Compliance

Recommendation

To help ensure that funding for structural compliance is fair and to encourage facilities to meet the new design standards, the Ministry should:

- *ensure all facilities are properly classified;*
- *review the structural compliance premiums to ensure that they are equitable and are achieving their intent; and*
- *consider providing incentives for facilities to upgrade their classifications.*

Current Status

The Ministry advised us that it was developing policies on asset management and facility renewal that would consider the recommendations in the Provincial Auditor's report. The policies were to be completed in late 2004.

PERFORMANCE MEASURES

Recommendation

To provide better accountability to the public and to help ensure that services of long-term-care facilities are provided efficiently and effectively, the Ministry should:

•*establish program goals, performance measures, and benchmarks and use them to assess performance;*

•*take corrective action where necessary; and*

•*report publicly on performance achieved.*

Current Status

The Ministry informed us that its work on developing a risk management framework includes data review and analysis and the identification of performance measures

Ontario Health Coalition
15 Gervais Drive, Suite 305
Toronto, Ontario M3C 1Y8
tel: 416-441-2502
fax: 416-441-4073
email: ohc@sympatico.ca
www.ontariohealthcoalition.ca