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Bringing Care Governance to Ontario's Retirement Homes Sector

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Abstract

In 2010, the Ontario government introduced Bill 21, the *Retirement Homes Act, 2010* (the Act), which required the licensing of retirement homes (RHs), residents' rights, care and safety standards, inspections, compliance and a newly formed Retirement Homes Regulatory Authority (Authority). The Act and its regulations drew heavily from the content of legislation pertaining to long-term care homes (LTC homes), recognizing that many RHs provided high acuity care. However, the Authority was constituted with a multi-sectoral board, which was arm's length from government. The stated goal of the Act was to ensure the dignity, respect, safety and privacy of residents, though the government also recognized the importance of preserving autonomy and choice for the predominantly private, for-profit operators and their residents. A consultation process spurred considerable debate over the content of the proposed legislation as well as the authority that would oversee it. The unwillingness of the government to fund care services in RHs (unlike LTC homes) influenced its policy decision to pass the Act in a form that gave greater autonomy to the industry to oversee its regulation through a multi-sectoral Authority, rather than one directed by government. A formal five-year review showed the reform to be well received by the public and key stakeholders, and an Effectiveness Survey for Stakeholders conducted by a third party indicated positive results, pointing to the success of both regulatory content and oversight.

Le gouvernement de l'Ontario a introduit en 2010 le Projet de loi 21, Loi de 2010 sur les Maisons de Retraite (la Loi), qui imposait l'accréditation des Maisons de Retraite (MR), des droits des résidents, des normes de soins et de sécurité, des inspections, une norme de conformité et la création de l'Office de réglementation des maisons de retraite (l'Office). La loi et ses règlements se sont fortement inspirés du contenu de la législation des foyers de soins de longue durée, de nombreuses MR fournissant des soins intensifs. Cependant, l'Office est doté d'un conseil d'administration multi-sectoriel, autonome par rapport au gouvernement. L'objectif déclaré de la Loi était de garantir la dignité, le respect, la sécurité et l'intimité, même si le gouvernement affirmait aussi l'importance de maintenir l'autonomie et le choix des opérateurs, principalement privés et à but lucratif, ainsi que de leurs résidents. Un processus de consultation a lancé un débat nourri sur le contenu de la législation proposée ainsi que sur l'office chargé de la gouverner. La réticence du gouvernement à financer les soins dans les MR (comme il le fait pour les foyers de soins de longue durée) a motivé la décision politique d'écrire une Loi donnant une plus grande autonomie à l'industrie pour mettre en oeuvre sa propre régulation à travers un Office multi-sectoriel, et non piloté par le gouvernement. Une évaluation formelle à cinq ans a montré que la réforme avait été bien reçue par le public et les principales parties prenantes, et une enquête d'efficacité auprès des parties prenantes, conduite par un tiers de confiance, suggère des résultats positifs, tant sur le fond que sur la gouvernance.

Key Messages

- The rapid aging of Ontario's population spurred growth in the retirement home (RH) sector and increased public awareness of the high acuity nature of care services for RH residents. This, in turn, led to calls for comprehensive regulation and oversight of the sector.
- Public consultations prompted heated debate over the content of proposed legislation (licensing, care and safety standards, inspection, enforcement, transparency of information and service offerings) and the composition of the authority to be responsible for its governance.
- The policy decision on the appropriate governance model was a compromise between the perceived need to ensure strong regulatory controls over licensed operators and a desire to preserve the autonomy of private, for-profit operators and their residents.
- A formal five-year review took place in 2015 through a consultation report, informed by feedback from the public, which showed the reform to be well received by stakeholders.

Messages-clés

- *En raison du vieillissement rapide de la population de l'Ontario, le secteur des maisons de retraite (MR) s'est développé, et le public a mieux perçu le degré d'intensité des soins prodigués aux résidents des MR. Il en est résulté des appels à une réglementation et des outils de surveillance du secteur.*
- *Des consultations publiques ont lancé un débat animé sur le contenu de la législation proposée (accréditation, normes de qualité et sécurité, inspection, contrôles, transparence de l'information et offres de service) ainsi que sur la composition de l'office en charge de sa gouvernance.*
- *La décision politique sur la structure de gouvernance jugée la meilleure représentait un compromis entre le besoin perçu d'assurer des contrôles réglementaires stricts sur les opérateurs accrédités, et une volonté de maintenir l'autonomie de ces opérateurs privés et à but lucratif, ainsi que de leurs résidents.*

- *Une revue formelle a eu lieu en 2015, donnant lieu à un rapport de consultation informé par les retours du public et montrant que la réforme était bien reçue par les parties prenantes.*

1 BRIEF DESCRIPTION OF THE HEALTH POLICY REFORM

In 2010, the Ontario government introduced Bill 21, the *Retirement Homes Act, 2010* (the Act), along with regulations that applied to retirement homes (RHs), defined as homes that are occupied primarily by persons over 65 years old, where the operator provides two or more care services. Prior to this, RHs were not regulated with regard to care, though various other statutes applied to the residents, staff, employers and fixed assets. These pertain to residential tenancies, occupational health, human rights, and building code. In addition many RHs implemented their own internal policies with regard to care, or opted for voluntary accreditation with the Ontario Retirement Communities Association (ORCA), which represents most of the RH owners. The Act introduced the licensing of homes, residents' rights, care standards, safety and security, protections against abuse, powers of inspectors, as well as the establishment of offences, penalties, appeals and enforcement. The Act also placed authority for RHs under the simultaneously created Retirement Homes Regulatory Authority (the Authority), which is independent of government, though responsible by contract to the Ontario Minister for Seniors and Accessibility, and whose mandate is to administer the Act.

2 HISTORY AND CONTEXT

In Canada, residential care services offered by long-term care homes (LTC homes) and RHs are considered neither insured services nor "medically necessary" within the *Canada Health Act* (CHA) as they are not services provided by physicians nor hospitals. Instead, they fall into the category of "extended health services," and are the responsibility of provinces and territories, resulting in different service offerings and funding regimes across the country.

Prior to the introduction of Bill 21, LTC homes in Ontario were already licensed, regulated and funded, though RHs were not. LTC homes are governed by the *Long-Term Care Homes Act, 2007*, report to the Ontario Ministry of Health and Long-Term Care (MOHLTC), and cater to residents requiring 24-hour nursing care, assistance or supervision. The Ontario government funds LTC homes in respect of nursing and personal care, therapies and food. As of October, 2010, there were approximately 75,000 licensed beds in LTC homes across the province (full capacity), while approximately 22,000 approved applicants were on wait lists (MOHLTC 2010).

At the time of the reform, the number of spaces in RHs had grown from about 31,000 in 2001 to approximately 51,000 (CMHC 2016). In contrast with LTC homes, RHs follow a tenancy relationship where residents choose a home and the care services they wish to purchase. RHs in Ontario cater to a broad care continuum, from independent seniors to those with high acuity needs comparable to residents in LTC homes (including some on the wait list for LTC homes). Recognizing the existence of higher acuity services, the Act and

its regulations introduced licensing, care and safety provisions similar to those that apply to LTC homes. However, the government chose a different governance model, opting to place RHs under the newly-constituted Authority rather than the MOHLTC.

The Authority is an independent corporation with a mandate to administer the Act, including the licensing and regulation of RHs. The Act permits the government to appoint directors to the board. According to Section 10 of the Act, government appointees may include licensees, consumers and representatives of business or government, provided that the directors appointed by the government do not constitute a majority of the board members. All other directors are to be elected by the members of the board. The Authority is ultimately responsible by contract to the Ontario Ministry for Seniors and Accessibility (formerly the Ontario Seniors’ Secretariat) through a Memorandum of Understanding. The Act states explicitly that the Authority and its directors are not agents of the Crown. These features distinguish the governance and accountability of RHs from LTC homes, which are accountable to the MOHLTC. Table 1 compares the accountability criteria adopted for RHs to those applicable to LTC homes.

Table 1: Comparison of accountability criteria: retirement homes and long-term care homes

ACCOUNTABILITY CRITERIA	RETIREMENT HOMES	LONG-TERM CARE HOMES
Legislative and regulatory authority	<i>Retirement Homes Act, 2010</i> ; O.Reg.166/11 and O.Reg.53/12	<i>Long-Term Care Homes Act, 2007</i> ; O.Reg.79/10
Statutory fundamental principle	“a place where residents live with dignity, respect, privacy and autonomy, in security, safety and comfort and can make informed choices about their care options”	“a place where [residents] may live with dignity and in security, safety and comfort and have their physical, psychological, social, spiritual and cultural needs adequately met”
Definition of home per applicable statute	A residential complex primarily for persons 65+ that makes available at least two “care services”	Long-term care home “means a place that is licensed as a long-term care home under the Act”
Ministry responsible	Ministry for Seniors and Accessibility (formerly the Ontario Seniors’ Secretariat)	Ministry of Health and Long-Term Care (MOHLTC)

Direct governance responsibility	Homes are accountable to the Retirement Homes Regulatory Authority, which is responsible by contract to the Ministry for Seniors and Accessibility	Homes are accountable through Multi-Sector Service Accountability Agreements to one of 14 Local Health Integration Networks, which report to the MOHLTC
Inspections	At reasonable times without notice to assess compliance with the Act and to occur at least once per year	At reasonable times without notice to assess compliance with the Act and to occur at least once per year

3 GOALS OF THE REFORM

3.1 Stated

The stated goal of the reform is best expressed in Section 1 of the Act as its “fundamental principle,” which is that “a retirement home is to be operated so that it is a place where residents live with dignity, respect, privacy and autonomy, in security, safety and comfort and can make informed choices about their care options.” The proposed legislation required that RHs assess a resident on admission, devise a plan of care, inform and include the resident on decisions affecting them, meet standards in respect of the care services provided and be subject to inspection and enforcement. However, the legislation does not specify an assessment instrument (such as the Resident Assessment Instrument Minimum Data Set or RAI-MDS) and does not require the involvement of a particular professional for most admissions.

3.2 Implicit

The government recognized the significant growth in the RH sector, partly as a result of the long wait lists for LTC beds. It was also apparent that RHs were serving residents of increasing care needs, which called for higher public scrutiny. The challenge was to formulate a governance structure and to devise and enforce care standards in the RHs. To do so, the government needed to recognize that the sector was dominated by private, for-profit entities that received none of the direct funding available to LTC homes to cover the provision of care or costs of compliance. In addition, the implementation of care standards needed to preserve personal freedom and choice of lifestyles that were important to operators and residents.

4 FACTORS INFLUENCING THE GOVERNMENT'S AGENDA AND DECISION

Achievement of the reform can be examined in the context of the 3I framework of ideas, interests and institutions.

4.1 Ideas

The reform was concerned simultaneously with the substance of the regulation and what authoritative body should oversee the RH sector. The need for regulation was not extensively debated, though there was disagreement over whether LTC homes served as the appropriate model by which seniors' residential care homes should be governed. The main issue was that of the identity of the authoritative body. Various authorities—including ORCA, local municipalities and the MOHLTC—were proposed as candidates for the governance role before the scope of the Act had been determined. Each option represented a distinct idea for governing RHs, from the most operator-friendly (ORCA) to the strictest (MOHLTC). One option was to continue the accreditation role of ORCA, making it mandatory, rather than voluntary. A second possibility was to enable local municipalities to create and enforce the necessary by-laws around RH care services, allowing some variation across municipalities. A third was to have the MOHLTC oversee RHs as it did for LTC homes, since it had the greatest familiarity with care standards and the infrastructure to conduct inspections, regulate compliance and ensure enforcement.

4.2 Interests

Prior to introducing the reform, the Ontario Seniors' Secretariat conducted a consultation process which included over 250 written submissions (OSS 2007). There was much disagreement as to how governance should be structured, though most respondents felt that the responsible body should be representative of consumers, industry, and government.

The concept of self-regulation by ORCA was opposed by advocacy groups, seniors and the nursing profession. The Advocacy Centre for the Elderly (ACE), which engages in law reform activities on behalf of seniors, argued that ORCA had not adequately complied in the past with existing tenancy laws and eviction protocols (ACE 2007). ACE also asserted that municipalities were not suitable regulators, since not all municipalities had the means to create and enforce the necessary by-laws, leading to unequal application across the province. The Ontario Nurses' Association (ONA 2010), the Registered Nursing Association of Ontario (RNAO 2011) and ACE voiced concerns that a governing authority being dominated by industry representatives would not protect the interests of residents. This was echoed by the government opposition during debates in the legislature (Hansard Ontario 2010). The ONA and RNAO proposed that RHs should have clear limits placed on the level of care offered, and that higher-need residents ought to be under the authority of the MOHLTC,

as was the case with LTC homes. Conversely, the application of MOHLTC-style regulation and inspection was seen by the industry as unnecessarily limiting to operators and their residents, and requiring costly compliance procedures that would need to be self-funded. In addition, some seniors and family members expressed concern that care standards would cause the predominantly for-profit RH sector to impose higher costs (OSS 2007).

4.3 Institutions

The consultation process indicated that most respondents favoured some type of regulation of RHs in order to ensure the care and safety of residents. However, concerns of intrusive regulation, similar to that for LTC homes, were expressed by owners and operators of RHs, which were mostly for-profit entities. In addition, there were risks of creating conflicts with existing provincial regulatory requirements. Finally, the unwillingness of government to use care funding as a policy lever, similar to LTC homes, limited its legitimacy to exercise authority through stringent oversight. Ultimately, conflicting views among interested parties over who should administer the regulations and ensure compliance led to the creation of an independent authority as the institutional choice.

5 HOW THE REFORM WAS ACHIEVED

5.1 Policy instruments

The over-riding policy instruments included the Authority and the Act with its accompanying regulations, which included registration and licenses to operate, enforcement provisions for non-compliance, and care and safety standards. Essentially, RHs are required to be licensed if they provide two or more “care services,” which may range from assistance with activities of daily living to dementia care. Where a home opts to provide a particular care service, it must then comply with the care standards set out in the regulations for that service.

The Authority, with its multi-sectoral makeup, was designated as the governing body to which all RHs were to report. Through its website, the Authority was also to provide information to the public regarding the care service profiles of all licensees, an annual report, details of formal complaints, and the results of all inspections. The Act drew from the regulatory regime of the *Long-Term Care Homes Act, 2007* and required a bill of rights, participation by residents in their own care plan, and a residents' council for each home. The Authority, with its multi-sectoral makeup, was designated as the governing body to which all RHs were to report. No funding instruments were employed by government.

5.2 Implementation plan

From first reading in the legislature, the Act took several years to implement fully, as it was the first attempt to regulate RHs in the province. The reform proceeded logically from broad

governance instruments to the detail of care standards and operating processes, resulting in full implementation by 2014. Implementation stages included the introduction of Ontario Regulations 166/11 and 53/12 under the Act; the Authority (June 2010); abuse provisions (May 2011); license applications (April 2012); a bill of rights and staff training requirements (July 2012); services standards, safety plans, assessment and care plans (throughout 2013); and mandatory insurance and emergency fund (January 2014).

5.3 Communication plan

The reform was facilitated by public input and transparency of information regarding the sector. This included, most importantly, the consultation process prior to enactment, which began in 2006, the call for and review of license applications, the compilation of the Authority's public register containing information regarding all licensed homes (RHRA n.d.), and the completion of the complaints process in 2014. Though the initial consultation process was inclusive, the decision-makers faced a difficult challenge in satisfying diverging interests regarding the content of the reform.

6 EVALUATION

The Act itself required that a review be undertaken within five years of its enactment, with the findings reported to the Legislature. This was undertaken by the Ontario Seniors' Secretariat and presented to the speaker of the Legislature in December 2015 (OSS 2015). Feedback was sought from the public as well as certain experts and key stakeholders. The consultation report emphasized the importance of the government being mindful of the diversity of the sector and its services, and the impact of administrative and financial burdens on RHs and residents. The report highlighted continuing calls from seniors' advocates for greater clarity regarding resident assessments and plans of care and issues related to consent. Many organizations agreed that the Authority needed broader powers to deal with unlicensed homes and that more collaboration was required between the Authority and other authorities (e.g., local public health agencies, fire departments, and health regulatory colleges) to improve efficiency around licensing, inspection and enforcement processes. In addition to the mandated five-year review, the Authority publishes on its website the annual report of its internal Risk Officer. As an example, the 2015-16 report examined the effectiveness of the Authority's inspection process in protecting residents, and concluded that the process in place satisfied legislative and regulatory obligations and ensured residents' safety and protection of their rights and interests.

In 2015, the Authority also commissioned an Effectiveness Survey for Stakeholders (Polaris Strategic Insights 2015), which surveyed (i) licensees and operators, (ii) key stakeholder organizations, and (iii) residents' councils and other similar resident groups. In general, all groups were found to have positive opinions of the Authority, with the public register being highly regarded. There was, however, an observed need for the Authority to make itself

better known, particularly to resident groups, by informing and encouraging participation in its programs.

7 STRENGTHS, WEAKNESSES, OPPORTUNITIES AND THREATS

Strengths, weaknesses, opportunities and threats of the reform are presented in Table 2.

Table 2: SWOT Analysis of the introduction of the *Ontario Retirement Homes Act, 2010*

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> ● Introduces into the sector standards and sanctions for care and security ● Multi-sectoral Authority (industry, consumer, government) is inclusive of stakeholders ● Generally not perceived by the industry as over-regulating ● Positive feedback on effectiveness from operators, residents, stakeholder groups ● Public register provides transparency for consumers and their families 	<ul style="list-style-type: none"> ● Concerns have been raised whether inspection and enforcement of care standards are adequate ● Continued lack of funding to RHs (or their residents) is seen as inequitable in comparison with LTC homes
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> ● Facilitates the growth in supply of safe, regulated, residential care, as a supplement (or even substitute when seniors are on the wait list) for LTC homes ● Allows government to contain future public expenditures on seniors' residential care by relying on the private-pay sector 	<ul style="list-style-type: none"> ● Challenges exist in coordinating the Act with other provincial/municipal regulations ● A rising proportion of high-need seniors may increase calls for MOHLTC to intervene ● Growth in seniors population (with limited increases in LTC beds) could fuel controversy over the lack of government funding of RHs

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