

THE REGIONAL MUNICIPALITY OF YORK

**REPORT NO. 1
OF THE REGIONAL COMMISSIONER OF COMMUNITY SERVICES, HOUSING AND
HEALTH SERVICES and REGIONAL SOLICITOR**

**For Consideration by
The Council of The Regional Municipality of York
on February 22, 2007**

**1
BILL 140 - LONG TERM CARE HOMES ACT, 2006**

***(Regional Council at its meeting on February 22, 2007 amended the following
Report by adding the following recommendation:***

***Staff be directed to send a letter to the Premier, the Minister of Health and
Long-Term Care and York Region MPP's relating to concerns with issues of
Directors' liability.)***

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council adopt the position outlined in Attachment 1 which addresses concerns related to the potential financial impact of the proposed legislation and proposed penalties for directors and officers that operate a Long Term Care (LTC) home.

2. The Regional Clerk be directed to send a copy of the report to the Ontario Association of Non-Profit Homes and Services for Seniors (OANHSS), the Association of Municipalities of Ontario (AMO) and the Minister of Health and Long-Term Care.

2. PURPOSE

This report is to provide Regional Council with highlights of Bill 140, along with its potential implications. The Report also sets out the submission made by Regional staff to the Standing Committee on Social Policy outlining the Regional staff concerns and general recommendations for amendments to the legislation.

3. BACKGROUND

In 1994, interim legislation and titled the *Long Term Care Statute Amendment Act*, was passed to bridge gaps and differences between existing LTC facility legislation; the *Nursing Homes Act*, the *Charitable Institutions Act* and the *Homes for the Aged and Rest Homes Act*. Among other things, that legislation reduced the age of admission from 65 to 18 and made a number of complex medical/nursing care and procedures which were previously prohibited or only delivered in hospital settings, mandatory for LTC facilities.

Bill 140 is intended to complete the process of legislative integration and will repeal and replace all of the aforementioned existing legislation governing LTC facilities/homes. Bill 140 also makes consequential amendments to other provincial Acts and incorporates substantial new requirements and accountability measures into the legislative framework. Bill 140 was tabled in October 2006 with a second reading that carried on December 5, 2006. The Standing Committee on Social Policy scheduled public hearings for January 16, 17, 22, 23 and 24, 2007 and a deadline for written submissions until January 19, 2007.

4. ANALYSIS AND OPTIONS

The following sets out highlights of the new *Long Term Care Homes Act (LTCHA)* and provides an analysis of some of the Bill's potential implications.

4.1 OANHSS and AMO Association Concerns/Positions

OANHSS and AMO have expressed concerns with respect to a number of clauses in the proposed Act and made detailed and extensive submissions to the Province.

4.2 Licensing and Operation

With respect to Bill 140, there is no change concerning the licensing of beds for the municipal sector. Municipal LTC homes will continue to hold "awarded," beds rather than licenses. Historically, municipal homes have been "awarded" beds by the Ministry and accrue no value for the beds should they downsize. The existing requirement that municipalities operate at least one home has also been retained in the legislation.

Charitable LTC homes, for the first time, will be issued licenses. The licenses will be of fixed durations, tied to structural compliance. For-profit nursing homes have operated under licensing agreements for many years and are able to sell the licenses on the open market. Under the new Act, their licenses will also have a defined term. A fixed term license, however, may substantially increase financing costs and have the potential to negatively affect charitable donations.

4.3 Resident Rights and Services

Bill 140 sets out the rights of residents of LTC homes and the services they are entitled to. This includes a bill of rights for residents and a requirement that each LTC home have a mission statement. Licensees of LTC homes must ensure that programs are in place to address the following areas:

- Nursing and personal support services
- Restorative care
- Recreational and social activities
- Dietary services and hydration
- Medical services
- Information and referral assistance
- Religious and spiritual practices
- Accommodation services
- A volunteer program

The Bill also requires that the licensee of a LTC home to establish and adhere to a policy to promote zero tolerance of abuse and neglect. In addition, the Bill provides for the establishment of an Office of Long Term Care Homes and Resident and Family Adviser to assist and provide information to residents and their families, among other functions.

Further, the Bill requires that every LTC facility establish a Residents Council which is given specific powers under the legislation, including the power to review the operation of the LTC home. Staff and Administration are excluded from being as members of the Council.

4.4 Use of Restraints/Secured Care Units

The utilization of restraints by LTC homes is addressed in the Bill. The provisions are aimed at minimizing the use of restraints of residents and establishing safeguards for permissible restraints. However, the Bill, at present, redefines a secured care unit as a “restraint.”

Secured care units in LTC facilities are designed to provide for the safety of residents with cognitive deficits and behavioural care needs. They have specialized programs that meet the unique requirements of residents with significant dementias that present a high safety risk to themselves or others due to wandering and/or aggressive behaviours. Bill 140 requires that the facility implement extensive hourly resident assessments by

registered staff. It is estimated that the cost of meeting this provision alone, would necessitate an increase equivalent to 1.2 full time registered staff for a 30 bed secured care unit. In the case of the Region, which operates 4 secured care units, this provision could result in the need for 4–5 additional registered staff to meet these requirements.

There are also provisions involving the appointment of a third party rights advisor before a resident can be admitted or transferred to a secured care unit. At present, a resident that has been deemed by a physician to be mentally incompetent and who is a safety risk to themselves or others may be placed on a secured care unit subject to the recommendation of the multi-disciplinary care team and with the consent of their substitute decision maker. Under Bill 140, the rights adviser must meet with the resident and explain the resident's right to apply to the Consent and Capacity Board, under section 53.1 of the *Health Care Consent Act*, 1996, for a determination as to whether the substitute decision maker complied with that Act in providing consent to the transfer to the secured unit.

These measures may result in delays in admission, increase the risk of harm to residents and result in increased costs to the system.

4.5 Training and Orientation

Bill 140 establishes additional staff training and orientation requirements on LTC homes. In accordance with the Bill, every operator of a LTC home is required to ensure that all staff, volunteers and all persons who provide direct services to residents on a periodic visitation basis at the home receive training and retraining, as required by the Act and its regulations.

It also requires that individuals who do not provided any direct care to residents in the LTC home, such as tradespersons, be provided with information on such matters as the residents' bill of rights, mandatory reports under the Act and other areas provided for in the Regulations.

These training provisions in the Bill have the potential to substantially increase training costs.

4.6 Penalties for Directors and Officers

The Bill sets out the duties and responsibilities of directors and officers of corporations operating LTC homes, as well as imposes significant penalties on operators who fail to comply with the requirements of the legislation.

Bill 140 dictates that all directors and officers of a corporation that operate a LTC home take reasonable care to ensure that the corporation complies with all the requirements under the Act. This can include municipal councillors in the case of municipally-operated LTC homes. Every person who is convicted of an offence under the Act, which includes non compliance of its provisions, is liable for a first offence, to a fine of not more than \$25,000 or to an imprisonment term of not more than 12 months, or to both,

and for a subsequent offence, to a fine of not more than \$50,000 or to imprisonment for a term of not more than 12 months, or to both.

These penalties are considerably more significant than set out in other health related legislation. For example, the *Public Hospitals Act* and its Regulations, by comparison, requires a hospital board to take such measures as it considers necessary to ensure compliance with the provisions of the Act and leaves the measures to ensure compliance to the discretion of the Board. Although the *Public Hospitals Act* has a general offence provision, it provides for a fine of not more than \$1,000 on conviction.

4.7 Compliance Costs and Funding

It is anticipated that operators will require additional resources in order to meet the compliance requirements of the Act which demands increased documentation and record keeping. There have been no new funding commitments from the Province to support the additional compliance requirements of the legislation, however. As a consequence, this has the potential to negatively impact upon resources available for direct care/hours of service for residents

In addition, Bill 140 does not address minimum staffing requirements and does not incorporate a capital renewal program for upgrading older facilities in the Province.

Accordingly, funding remains a critical issue which is further exacerbated by the fact that there are no new funding commitments to support the new compliance requirements of Bill 140. The Region at its Council meeting of November 17, 2005 approved and passed a resolution urging the provincial government to: increase the per diem to residents of LTC homes in the fiscal year 2006-2007 by \$4,083.75 per resident, thereby fulfilling its election promise made in 2003 and enabling the significant investments necessary to meet the immediate needs of residents.

In the intervening time period, only an annual increase of \$387.75 per resident has been realized, leaving a shortfall of \$3696 per resident. The staff submission reiterated Regional Council's funding resolution and asked that the balance of the funding ask [\$3696/resident/year] be committed to the LTC program. The Regions submission also asked that the Province appoint a third party to conduct a cost and benefit analysis of the proposed legislative changes and new requirements prior to implementation and based on the results commit to funding the increase cost or streamline and/or defer the additional legislative requirements until the funding is made available.

5. FINANCIAL IMPLICATIONS

Although there are no financial implications associated with this report at this time, should the *LTCHA* be passed without significant amendment or corresponding funding increases there could be added costs for the municipality.

6. LOCAL MUNICIPAL IMPACT

There is no local municipal impact associated with this report.

7. CONCLUSION

The Bill's goal of building a stronger and safer LTC system that is accountable is important for the care of residents of LTC homes. There are however, potential implications and issues associated with the proposed new LTC legislation. If these issues are not addressed by the Province during the consultation process, there may be increases in the cost of administering and delivering LTC programs without achieving corresponding improvements in the quality of care provided.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)

Respectfully submitted,

**February 22, 2007
Newmarket, Ontario**

**J. Simmons
Commissioner of Community
Services, Housing and Health
Services**

**J. Hulton
Regional Solicitor**

(Report No. 1 of the Commissioner of Community Services, Housing and Health Services was adopted, as amended, by Regional Council at its meeting held on February 22, 2007.)

York Region

JOANN SIMMONS, *Commissioner*
Community Services, Housing and Health Services

January 18, 2007

Standing Committee on Social Policy
Legislative Assembly of Ontario
Room 1405, Whitney Block
99 Wellesley Street West
Toronto, ON M7A 1A2

Attention: Mr: Trevor Day, Committee Clerk

Re: Bill 140

I am writing as the Commissioner of Community Services, Housing and Health Services of the Regional Municipality of York with regards to Bill 140.

First, as staff we would like to acknowledge the many positive attributes and the entrenchment of a number of important resident safeguards into the proposed legislation. The Region fully supports the Bill's goals of ensuring that residents in long term care homes live with dignity and in security, safety and comfort.

However, the potential implications of this legislation for the long term care home sector will be substantial and far-reaching. Due to the short time frames provided by the Province, coupled with the size and the complexity of the legislation, we have not had the opportunity to provide a full report to our governing body, the Regional Council, which we plan to table in February. Accordingly, we wish to recommend that the Province extend the period of consultation by a minimum of 30 days.

While we are hopeful that the Province will respond positively to our request to extend the period of consultation, in the event that does not happen, we request the Province give consideration to the following general concerns and recommendations before finalizing the proposed LTC legislation.

Our primary concern is that the legislation, as drafted, is overly prescriptive. We are concerned that, as a consequence, it will require that organizations spend a great deal more of their time and resources on meeting compliance with the Act through documentation and other record keeping, taking resources away from the provision of direct care and services to residents.

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To address this issue and quantify the potential cost ramifications associated with the proposed legislation we are recommending that the Province have a third party conduct a cost and benefit analysis of the proposed legislative changes and new requirements prior to implementation and, based on the results, commit to either funding the increased cost or streamline and/or defer the additional legislative requirements until the funding is made available.

We also recommend that the Province include in the legislation requirements for public consultation for making or changing Regulations under the Act. A similar provision is contained in the *Commitment to the Future of Medicare Act, 2004*.

In addition, the proposed penalties for Directors and Officers of non profit corporations operating long term care homes is another area of concern and we would ask that the Province give further consideration to those provisions.

The other major concern and a critical component of any meaningful LTC reform is ensuring that there is adequate funding and resources to meet the difficult, challenging and complex care needs of the residents. In this regard, I would like to reiterate Regional Council's December 2005 resolution, a copy of which is appended, and request that the government fulfill the balance of its election promise and commitment of \$6,000 per resident/year in additional LTC funding. We also strongly recommend that the legislation establish and fund minimum care/service levels and include provisions to address funding inequities associated with existing pay equity and arbitration legislation.

Thank you for your consideration in this regard and the opportunity for providing preliminary comment and feedback regarding the proposed legislation. We look forward to a positive response to our request to extend the consultation period and the opportunity that will provide for ourselves and others to provide more meaningful and detailed feedback in the development of these important legislative reforms.

Sincerely,



Joann Simmons
Commissioner of Community Services, Housing and Health Services

Attachment

Copy to: Bill Fisch, Regional Chair and CEO
Michael Garrett, Chief Administrative Officer
Donna Rubin, CEO, OANHSS



Resolution attached to Clause No. 3 in Report No. 8 of the Health and Emergency Medical Services Committee was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting on November 17, 2005.

Support for Additional Funding for Long Term Care

WHEREAS, in 2003, the Liberal party determined that increased funding to long term care homes by \$6,000 per resident per annum would be a reasonable sum to provide adequate care to clients;

WHEREAS, funding for direct care and services to residents to date represents \$1,916.25;

WHEREAS, long term care clients/residents often have multiple chronic illnesses and require specialized care and services. More than half suffer from dementia and other mental health illnesses, and over three-quarters require rehabilitation to maintain their level of functioning.

WHEREAS, the acuity levels in long term care facilities have risen by more than 20% since 1993 and many clients/residents require complex medical/nursing care and treatments like; intravenous treatments, gastric feeding tubes and oxygen therapy; residents suffering from dementia require a high staff ratio to meet their very complex and challenging needs which is not reflected in the funding facilities receive to the extent that these people deserve.

WHEREAS, the Level of Service Study, commissioned by the Ministry of Health and Long-Term Care and conducted by PriceWaterhouse Coopers, which compared the amount and type of care received by residents in Ontario long term care settings with those in other Canadian, American and international jurisdictions, concluded that of the 11 jurisdictions studied, Ontario was ranked the lowest in the amount of nursing and therapy services provided to residents in long term care facilities. The study found that Ontario provides on average 2.04 hours of care/resident/day as compared to 2.44 hours of care/resident/day in the next lowest jurisdiction, Manitoba [PriceWaterhouse Coopers. (2001). *Report of a Study to Review Levels of Service and Responses to Need in a Sample of Ontario Long Term Care Facilities and Selected Comparators*].

WHEREAS, the Provincial Auditor, in his 2002 Annual Report, included the Level of Service Study in his review of long term care. He stated that they had found no evidence to indicate that the MOHLTC had addressed the results and he outlined recommendations for ensuring 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."

WHEREAS, the 2005 Casa Verde Provincial Coroner's Jury recommended that the MOHLTC immediately fund and set standards requiring all LTC facilities to increase staffing levels to, on average, no less than 0.59 RN hours per resident per day and 3.06 per resident per day overall nursing and personal care for the average Ontario Case Mix Measure (a measure of the level of care and acuity of residents at a given facility).

NOW, THEREFORE BE IT RESOLVED that the Council of The Regional Municipality of York urges the Province of Ontario to increase the per diem to residents of long term care homes in the fiscal year 2006-2007 by \$4,083.75 per resident, thereby fulfilling and enabling the significant investments necessary to meet the immediate needs of residents.