On June 4, 2007, the Long-Term Care Homes Act, 2007 (formerly Bill 140), received Royal Assent and replaces the Nursing Homes Act, the Charitable Institutions Act and the Homes for the Aged and Rest Homes Act. The Act will come into force on a day to be named by proclamation of the Lieutenant Governor. For more information about the key concepts of the legislation, please see our Communiqué dated October 6, 2006 which summarized the first reading version of the bill.

The following is a summary of new or amended provisions in the final version of Bill 140. These resulted from changes made to the first reading version of the bill, after an extensive public consultation process that was concluded in January 2007.

Part I - Fundamental Principle and Interpretation

♦ The preamble to the Act now includes recognition of the importance of fostering the delivery of care and services to residents in an environment that supports continuous quality improvement and a commitment to the promotion of long-term care by not-for-profit organizations.

♦ The meaning of “explain” has been added. A rights adviser or other person explaining a matter to a resident or applicant for admission does so by “explaining the matter to the best of his or her ability and in a manner that addresses the special needs of the person receiving the explanation, whether that person understands it or not”.

Part II - Residents: Rights, Care and Services

♦ Every long-term care home shall ensure that there is a written plan of care for each resident. The plan shall be evaluated at least every six months which differs from the three month time period set out in the first version of the Act.

♦ Every long-term care home shall ensure that staffing and care standards are met as provided for in the regulations, which have yet to be drafted.

Part III - Admission of Residents

♦ This part of the Act now applies to transfers of persons within a home to a specialized unit as well as new admissions of residents to a long-term care home. This Part of the Act streamlines the admission process; the applicability of this section to transfers and not just new admissions addresses the concern that the legislation should not impede the transfer process.
♦ Provisions regarding an admission to a secure unit in a crisis as well as the role of the rights adviser during admission to a secure unit have been added.

Part IV - Councils

♦ The first reading version of the Bill permitted different categories of persons to become members of the Residents' Council (e.g. management, staff member, person with controlling interest in the licensee). The final Bill only allows residents of the long-term care home to be members of the Council.

♦ Only a family member or a "person of importance" of a current resident may be a member of the long-term care home's Family Council. The provision for a family member or person of importance of a former resident or member of the community as set out in the first reading version of the bill has been removed. The bill also adds to other categories of persons who are not permitted to be members of the Family Council: 1) a person who is employed by the Ministry or who has a contractual relationship with the Minister or Crown regarding matters for which the Minister is responsible and who is involved as part of their responsibilities with long-term care home matters and; 2) any other person provided for in the regulations.

♦ If no Family Council is established, the licensee shall convene semi-annual meetings to advise persons of the right to establish a Family Council. The first reading version of the Act provided for this meeting to take place quarterly.

Part V - Operation of Homes

♦ The first reading version of the Bill required directors and officers of a corporation to "take all reasonable care to ensure that the corporation" complied with all the requirements under the Act. The final version of the Bill adds language which is more consistent with standards of governance and states that every director and every officer of the corporation shall "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable reasonable circumstances" and to "take such measures as necessary to ensure that the corporation complies with all requirements" under the Act. This "reasonableness standard" involves directors and officers of a corporation reviewing the systems the home already has in place and a determination of whether the current systems comply with the obligations the corporation has under the Act, among other things.

♦ With respect to training, only staff of the long-term home are required to receive training. Previously, the bill stipulated that all volunteers and persons who provided direct services to residents on a periodic visitation basis at the home also required training.

♦ A new section of the Act provides for volunteer orientation.

Part VI - Funding

♦ A new provision has been added permitting the Lieutenant Governor in Council to make regulations governing payments to the licensee for basic accommodation, preferred accommodation and other amounts that may be provided for under an agreement.

Part VII - Licensing

♦ A new section provides for temporary emergency licenses. A temporary license may be revoked at any time on the giving of notice provided for in the license. The license may be issued for a term of no more than 60 days and may not be renewed or reissued. No interest in the temporary emergency license may be transferred.

1 Additional information regarding the accountability obligations for directors and officers of homes can be found in a recent article by Kathryn Frelick, Potential Implications of Proposed Ontario Long-Term Care Homes Legislation for Directors and Officers, in Miller Thomson LLP's Charity and Not-for-Profit Newsletter (February 2007), online: <http://www.millerthomson.com/mtweb.nsf/web_files/kmd6ykps)/$File/Charities_FEB_O7.pdf?openelement>.
Short term authorizations for beds at a long term home may be provided for a term of no more than 30 consecutive days for a single period. The phrase “single period” has been added to the original provision found in the first reading version of the Bill.

The Director may amend a license to extend its term in only two situations: a substantial renovation of the home or a significant addition of beds to the home. Aside from these two situations, amendments to extend the term of a license are not permitted under the Act.

Decisions of the Minister or the Director related to a competitive process are made within the sole discretion of the Minister or the Director and are not subject to an appeal.

Part VIII - Municipal Homes and First Nations Homes

With respect to the modification for a grant of an approval for a municipal home, the provision contained in the first reading version of the Bill that stated public consultation before the undertaking did not apply, has been removed from the current version of the Bill.

A provision has been added to allow the Lieutenant Governor in Council to make regulations specifying the times by which payments for operating costs and capital costs of the municipal home are to be made.

Part IX - Compliance and Enforcement

Inspections of homes are required at least once a year. The exception to this requirement found in the first reading version of the bill, which provided for certain classes of homes and homes having a good record of compliance to be inspected on a less frequent basis, has been removed from the current version.

If an inspection is required, a new section has been added to provide for a meeting between the Inspector and the Councils of the home, if requested or permitted by the Councils.

A licensee against whom an order is made by an inspector may make a written request to the Director to review the order. The request must be served on the Director within 28 days from the day the order was served on the licensee. The first reading version of the bill stated that the request for review must be served on the Director within 14 days.

A licensee may appeal an order or decision by the Director to the Appeal Board. To do so, the licensee shall give the Appeal Board and the Director a notice of appeal within 28 days from the day the licensee was served with a copy of the order or decision that is being appealed from. The previous version of the Bill indicated that the licensee only had 15 days to give the notice of appeal.

A new section allows the Director, in accordance with the regulations, to recognize long-term care homes with an excellent record of compliance with the requirements under the Act.

Part X - Administration, Miscellaneous and Transition

The Director’s power to alter or revoke orders under the Act has been added to the current version of the Bill.

The range of fines for personal liability of directors and officers if a home is unable to meet legislative requirements varies depending on whether the home is part of the for-profit or non-profit sector. For individuals, directors or officers in the non-profit sector, a fine of not less than $50 and not more than $1000 may be imposed. For individuals in the for-profit sector, liability on a first offence may result in a fine not exceeding $25,000 and/or 12 months imprisonment; a subsequent offence may result in a fine not exceeding $50,000 and/or 12 months imprisonment.

Prior to making initial regulations, the Lieutenant Governor in Council must engage in public consultation, subject to several exceptions.
The term of a replacement license shall be 25 years starting on the day the first resident was admitted to the home, but in no event shall the term be less than 20 years from the date that the provision in the Act comes into operation. For the different classes of beds the terms shall be: class A beds - 20 years (the previous bill allowed for 15 years); class B beds - 15 years (previously, 12); class C beds - 15 years (previously 10) and for class D beds that were not upgraded in accordance with the Upgrade Option Guidelines, the term shall be 4 years (previously, 1).

Part XI - Repeals and Consequential Amendments

Health Care Consent Act, 1996: The definition of "crisis" and "secure unit" under section 39 of the Act have been amended. Subsection 47(2) of the Act is repealed and substituted to allow for consent or refusal of consent from an incapable person's substitute decision-maker to be obtained by the person authorizing admissions to the care facility promptly after the person has been admitted.

We will be monitoring this legislation and will advise when it is proclaimed into force. We would be pleased to assist you with further analysis and specific advice on this legislation or with the development of policies and procedures.

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