



## ***Alzheimer Knowledge Exchange***

Presentation  
September 21st, 2010

September 20, 2010

1



## **LONG-TERM CARE HOMES ACT, 2007**

Jane E. Meadus  
Institutional Advocate  
Barrister and Solicitor

September 20, 2010

2



## Long-Term Care Homes Act, 2007

- Came into force July 1, 2010
- All sections except section 32
  - This section deals with admission to secure units, rights advice and the right to a hearing
  - Will be enacted in the future – likely changes will occur to the legislation with respect to this particular section
- General Regulation - O. Reg. 79/10

September 20, 2010

3



## Repealed

- Old legislation repealed (*Charitable Homes Act, Homes for the Aged and Rest Homes Act, and Nursing Homes Act*)
- *Long-Term Care Homes Program Manual*
  - no longer applicable

September 20, 2010

4



## Regulations

- Besides *LTCHA*, must look to the regulations (O. Reg. 79/10)
- Found at [www.elaws.gov.on.ca](http://www.elaws.gov.on.ca)
- Act is the framework of the law
- Regulations are the “meat” – much of what was in standards is now in the regulations
- Regulations are easier to change than the Act

September 20, 2010

5



## Complementary Legislation

- *Health Care Consent Act*
- *Substitute Decisions Act*
- *Personal Health Information and Protection Act*
- *Fire Code*
- *Occupational Health and Safety Act*
- Many others

September 20, 2010

6



## Detailed Discussion of New Legislation

- For a detailed discussion of the new legislation, please see:  
    “A Brand New World: Ontario’s New *Long-Term Care Homes Act*”, by Jane E. Meadus, *Summer 2010 Advocacy Centre for the Elderly Newsletter*, Volume 7, Number 1 - Special Insert

September 20, 2010

7



## Funding

- Legislation does not deal with funding
- Separate issue
- Ministry of Health and Long-Term Care reviewing funding of long-term care homes

September 20, 2010

8



## Accommodation Rates

- Rate reduction only in basic accommodation
- New scheme for rate reduction – more complicated – includes reduction for dependents (under age 65)
- HOWEVER, regulation recently passed to delay this
- If have client who would have benefitted from new regulations – seek legal advice

September 20, 2010

9



## Admission

- Change in some eligibility criteria (see *Changes in Eligibility Criteria in the Long-Term Care Homes Act, 2007*)
- CCAC to control process
- Can now choose **maximum** of 5 homes – there is no **requirement** to choose 5 homes
- If in crisis – may choose more homes – not **required** to choose more
- Hospitals and CCACs have no authority to make you choose specific homes

September 20, 2010

10



## Waiting Lists

- Changes to wait lists
- Spousal reunification category changed – only eligible once one of the spouses in long-term care
- Category 3 (religious, ethnic or linguistic origin) and Category 4 (other) split into A and B lists
  - Category A includes persons receiving high levels of care in the community or who are ALC in Hospital

September 20, 2010

11



## Staffing

- Legislation mandates certain types of required staffing
- For example, Administrator, Dietician, registered nursing staff
- NO specified hours of staffing for unregistered staff – ie PSWs
- Up to the home to ensure that they are staffed to meet the needs of the residents

September 20, 2010

12

## Flexibility

- Despite increased length in Act and regulations, which is due in part to abolishing the standards, the Act does not prescribe to homes how to provide care
- Care is outcome based, within certain parameters
- New compliance scheme to focus on certain specified areas, the rest on outcomes
- Quality Indicator Survey (QIS) developed by Dr. Kramer from University of Denver (available on the web) being adapted for Ontario

September 20, 2010

13

## Resident's Bill of Rights

- Twenty-seven (27) rights – expanded from 19
- For comparison with old legislation – see *Residents' Bill of Rights Under the Long-Term Care Homes Act, 2007*
- Guides interpretation of:
  - The Act and regulations
  - Agreements between the licensee and Crown/agent
  - Agreements between the licensee and resident/SDM

September 20, 2010

14



## Prevention of Abuse and Neglect

- Abuse
  - in relation to a resident, means physical, sexual, emotional, verbal or financial abuse, as defined in the regulations in each case
- Neglect
  - the failure to provide a resident with the treatment, care, services or assistance required for health, safety or well-being, and includes inaction or a pattern of inaction that jeopardizes the health, safety or well-being of one or more residents.

September 20, 2010

15



## Prevention of Abuse and Neglect

- Licensee has duty to protect residents from abuse from anyone and neglect by licensee or staff.
- Ensure that there is in place a written policy to promote zero tolerance of abuse and neglect of residents, and shall ensure that the policy is complied with.
- Communicate policy to all staff, residents and residents' SDMs.

September 20, 2010

16





## Reporting and Complaints

### Licensee required to:

- Have written procedures for initiating complaints to the licensee and for how the licensee deals with complaints.
- Forward all written complaints concerning the care of a resident or the operation of the long-term care home to the Director.

September 20, 2010

17



## Licensee must Investigate Respond and Act

- Where licensee knows of allegations, suspicions or witnessed incidents of:
  - Abuse of a resident by **anyone**
  - Neglect of a resident by **licensee or staff**, or
  - Anything else provided for in the regulations
- Licensee must:
  - Immediately investigate
  - Take appropriate action
  - Comply with any other requirements set out in the regulations
  - Report all investigations and actions to the Director

September 20, 2010

18



## Reporting Certain Matters to the Director

- **Everyone** who believes that **any** of the following have occurred or may occur must **immediately** report to the Director
  - Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.
  - Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident.
  - Unlawful conduct that resulted in harm or a risk of harm to a resident.
  - Misuse or misappropriation of a resident's money.
  - Misuse or misappropriation of funding provided to a licensee under this Act.

September 20, 2010

19



## Reporting Certain Matters to the Director (cont'd.)

- Knowingly providing false information is an offence, except in the case of incapable residents
- Residents **may**, but are not required, to make reports

September 20, 2010

20



## Duty on Practitioners and Others

- Reports may be made by health practitioners and social workers even if the information is based upon confidential or privileged information, as long as it is not malicious or without reasonable grounds for the suspicion.

September 20, 2010

21



## Offences

- An offence is committed
  - Where there is no report made by named professionals, including those providing professional services to a resident or licensee in the area of health, social work or social services work
  - If licensee, management or staff member attempts to
    - coerce or intimidate a person not to make a report;
    - discourage a person from making a report; or
    - authorize, permit or concur in a contravention of the duty to make a report.

September 20, 2010

22



## Inspection or Inquiries where Information Received by Director

- Inspection or inquiries by an inspector are required where the Director receives information about:
  - Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.
  - Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident.
  - Unlawful conduct that resulted in harm or a risk of harm to a resident.
  - A violation of whistle-blowing section.
  - Misuse or misappropriation of a resident's money.
  - Misuse or misappropriation of funding provided to a licensee under this Act.
  - A failure to comply with a requirement under this Act.
  - Anything else set out in the regulations.

September 20, 2010

23



## Immediate Visit to Home

- **Immediate inspection** is required where there is:
  - Improper or incompetent treatment or care of a resident that resulted in serious harm or a risk of serious harm to a resident
  - Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in serious harm or a risk of serious harm to a resident
  - Unlawful conduct that resulted in serious harm or a risk of serious harm to a resident.
  - Violation of section 26 (whistle-blowing section)
  - Anything else as set out in the regulations.

September 20, 2010

24



## Whistle-blowing Protection

- No tolerance policy for retaliation against whistle-blowers
- Retaliation includes:
  - Dismissing a staff member
  - Disciplining or suspending a staff member
  - Imposing a penalty upon any person
  - Intimidating, coercing or harassing any person.

September 20, 2010

25



## No Retaliation Against Residents

- No retaliation against residents, and specifically:
  - Discharge or threat of discharge
  - Subjected to any discriminatory treatment – including any change or discontinuation of service to or care of a resident or the threat of any such change or discontinuation.
- No threats against family members with the possibility of the above.
- No retaliation **even** where the resident or other person acted maliciously or in bad faith.

September 20, 2010

26



## May Not Discourage Reporting

- Licensee, staff, etc. not to discourage reporting

### **COMPLAINT TO OLRB**

- Staff member may file a complaint with the OLRB where retaliation is alleged

September 20, 2010

27



## Responsive Behaviours

- New concept under the regulation
- Definition:
  - (a) an unmet need in a person, whether cognitive, physical, emotional, social, environmental or other, or
  - (b) a response to circumstances within the social or physical environment that may be frustrating, frightening or confusing to a person;

September 20, 2010

28



## Responsive Behaviours (Cont'd.)

- Homes required to develop:
  - Written approaches
  - Written strategies
  - Resident monitoring and internal reporting protocols
  - Protocols for referral of residents to specialized resources where necessary
- Must be integrated into the care provided to the residents

September 20, 2010

29



## Behaviours Altercations and other Interactions

- Duty on the home to take steps to minimize risk of and prevent altercations between and among residents
- Duty to assist both residents and staff
- Must develop procedures to minimize risk of potential harmful interactions due to resident's behaviours, including responsive behaviours

September 20, 2010

30



## Restraints

- Intent is to minimize restraints
- Distinction between
  - Physical restraints
  - Barriers, locks
  - Secure units
  - Personal Assistance Service Devices (PASDs) –

September 20, 2010

31



## Common Law Duty

- The *Long-Term Care Homes Act* does not change the common-law duty to restrain or confine
- The Common law allows a caregiver to restrain or confine the person where immediate action is required to prevent serious bodily harm to the person or others.
- Where the resident is restrained pursuant to this duty, the licensee must ensure that the device is used in accordance with the regulations.
- **Chemical Restraints**
  - Medications can be used as chemical restraints only pursuant to the following:
    - A resident may not be restrained by the administration of a drug (chemical restraint) unless the use is ordered by a physician or other person allowed to do this under the regulations.
    - The licensee must ensure that the drug is used in accordance with the requirements in the regulations.

September 20, 2010

32





## Personal Assistance Service Devices

- A device being used to assist a person with routine activity of daily living
- Must be included in plan of care
- Alternatives must have been considered
- Must be least restrictive method
- Must be approved per the Act

September 20, 2010

33



## Part IV - Councils

- Residents Council
- Family Councils - NEW
- Establishment, rules and powers of Councils
- Administrator/licensee may not interfere with either Resident's Council OR Family Council

September 20, 2010

34



## Regulated Documents

- No regulated document can be presented to the resident or their SDM for signature unless it complies with all regulations and is certified by a lawyer
- Agreements between (prospective) resident, SDM, family member are voidable for 10 days after they are made

September 20, 2010

35



## Refusal To Sign Documents, Consent, Etc.

- No (prospective) resident can be told or led to believe that they will be refused admission or discharged from the home because:
  - They have not signed a document;
  - An agreement has been voided;
  - Consent to treatment or care has been given, not given, withdrawn or revoked; or
  - A directive regarding treatment or care has been given, not given, withdrawn or revoked.
- This does not apply with respect to consent required by law for admission to a long-term care home or transfer to a secure unit.

September 20, 2010

36



## Part IX – Compliance and Enforcement

- Every home shall be inspected at least once a year.
- There shall be no notice of inspections, except where specified under the regulations.

September 20, 2010

37



## Compliance and Enforcement

- Annual inspections
- Most unannounced (except where allowed by regulation)
- All findings of non-compliance to be documented
- Inspector has authority to make orders to licensee
- Where order not complied with, funding may be ordered returned or withheld

September 20, 2010

38



## Other Resources

- Community Legal Education Ontario (CLEO)
  - Resident's Bill of Rights Brochure (being revised)
  - Power of Attorney Brochures
  - Elder Abuse the Hidden Crime
  - [www.cleo.on.ca](http://www.cleo.on.ca)
- NICE Network
  - Capacity and Consent Pocket Tool
  - [www.nicenet.ca](http://www.nicenet.ca)

September 20, 2010

39



## Advocacy Centre for the Elderly

2 Carlton Street, Suite 701  
Toronto, ON M5B 1J3

Phone: 416-598-2656

Fax: 416-598-7924

[www.ancelaw.ca](http://www.ancelaw.ca)

September 20, 2010

40