September 30, 2015

Retirement Homes Act Review
Ontario Seniors’ Secretariat
777 Bay Street, Suite 601C
Toronto, ON, M7A 2J4

Re: Comments for the Five Year Review of the Retirement Homes Act, 2010

On behalf of Niagara Region Public Health, I write to provide comments to inform the five year review of the Retirement Homes Act and its associated regulation, Ontario Regulation 166/11.

Thank you to the Ontario Seniors’ Secretariat for inviting public comment as part of this review. We are appreciative of the work the Secretariat has done to create and implement a legislative framework setting standards regarding the safety, security, and care for our seniors. This is very complementary to our work as a local public health agency, as we try to maximize the health of our seniors.

Our comments reflect the questions posed in the request for comments

1. Given the experience and data available to date, what amendments to the Act and its regulations, if any, should be considered by the government at this time to fine-tune the Act (e.g. clarify language or intent, or address technical matters), while maintaining the fundamental principles and policy framework underlying the legislation?

   1. Role in licensing. Currently, local public health agencies have no role in the licensing of retirement homes under the Act. This occasionally leads to problems as a retirement home, upon commencing operation, may not yet have adequate food safety practices, infection control protocols, or safe physical structures in place. When we do learn about the facility, we are able to help homes rectify their weaknesses, but in the interim residents are at greater risk.

   In some cases, there are municipal bylaws that require retirement homes to also seek municipal licensing, and we often have a formal role in this licensing. However, we have often encounter the paradox where we identify concerns and issue work orders that prevent municipal licensing from being granted until concerns are addressed, but meanwhile the Retirement Homes Act license is granted. This obviously sends a mixed message about the facility’s readiness to operate. Not all municipalities, however, include such municipal licensing requirements.
In order to ensure residents of licensed retirement homes are safe from the moment a retirement home begins to operate, we suggest that sign-off by the local medical officer of health or delegate be a requirement of provincial licensing. This would enable us to ensure that all food safety, infection control, and physical structure requirements are met. Consideration might also be given to requiring any municipal licenses to be granted prior to issuing the Retirement Homes Act license.

2. **Registration and/or notification of new licensed retirement homes.** Presently, although local public health agencies are referenced with regard to implementing certain aspects of the Regulation (e.g. section 20 Food Preparation; Section 27 Infection Prevention and Control Program), we have found that we are generally not made aware of licensed retirement homes when they begin operation. Instead, we tend to learn of them by accident. This denies the residents of these retirement homes the support and safety that our staff could provide. Should we be provided a role in licensing as in #1 above, that would rectify this problem as well. In absence of that, we request at least being notified prior to or as part of the process of registering new retirement homes. The Association of Local Public Health Agencies (alPHa) and the Association of Supervisors of Public Health Inspectors of Ontario (ASPHIO) have previously requested that the local Board of Health or Medical Officer of Health be notified as part of the registration or licensing process for a retirement home under this Act. We add our support to these requests.

3. **Explicit role in food safety.** Section 20 of the Regulation makes reference to local public health agencies’ food handling training. That section also outlines a number of requirements for licensed retirement homes to follow in food preparation. In analogous institutions (e.g. long term care facilities) and in most premises where food is produced for consumption by several others who are not family, it typically falls to local public health agencies to enforce these food preparation requirements. The Regulation under this Act, however, does not explicitly empower local public health agencies to enforce the requirements here.

It is our belief, that Ontario Regulation 562/90 under the Health Protection & Promotion Act nonetheless requires us to inspect and enforce food safety under that regulation for any retirement homes with 10 more residents.

There are two problems here: (1) we have a mandate to enforce food safety in retirement home (with 10 more residents) under Regulation 562/90, but there is also a similar requirement under section 20 of Regulation 166/11 and it is unclear who is to enforce that; (2) our mandate under Regulation 562/90 extends only to those retirement homes with more than 10 residents, but not to those with fewer than 10 residents; Regulation 166/11 would cover those, but it isn’t clear if we are to enforce those.

We suggest that the Regulation should be amended to explicitly entrust the enforcement of section 20 to the local Board of Health or Medical Officer of Health. This would ensure both consistency in enforcement of food safety under both applicable regulations, as well as ensure that all retirement homes, not just those with 10 residents or more, have safe food handling practices. We note that alPHa and ASPHIO have suggested a similar amendments to the Regulation.

4. **Definition.** In section 2(1) of the Act, the definition of a retirement home include the phrasing “that is occupied primarily by persons who are 65 years of age or older”. We have observed cases where retirement home operators have used the nebulous nature of the word “primary” to claim the Act does not govern them and thereby escape scrutiny. We
recommend that the word “primary” be replaced by a more specific reference, e.g. 50% or more residents being 65 years of age or older. This would prevent manipulation of whether the Act applies or not. ASPHIO has made a similar suggestion.

One other tactic we have observed from some retirement home operators is that residents over the age of 65 years have been moved between retirement homes owned by the same owner to reduce the number of seniors resident in the home and thus escape the scrutiny of the Act. We suggest that ways to prevent this also be explored. For example, perhaps if a home reaches the threshold of residents aged 65 years or older to become a retirement home under the Act, that status persists for a period of time (e.g. 1 or 2 years) even if they cease to meet the definition.

2. Given the experience and data available to date, what amendments to the Act and its regulations, if any, should be considered by the government at this time to improve the effectiveness of the Act (e.g. enhance compliance and administration of the Act)?

We have three comments relative to this question. The first two may not necessarily require amendments to the Act or the Regulation, however, we include them here since they are important for compliance and administration of the Act and Regulation.

1. Frequency of inspections. From our observations in retirement homes, we have often observed what we consider to be sub-par care and attention to the residents therein. As eliminating this was the purpose of this Act, we believe this is of great concern. Our belief is that this stems from the relatively infrequent inspections by Retirement Homes Act (RHA) inspectors: rarely more than once a year. In contrast, our public health inspectors visit these homes at least three times a year, and additional times if there are any concerns we identify. Currently, RHA inspectors are assigned very large geographic areas, so more frequent inspections are likely not possible. We recommend that the Ontario Seniors’ Secretariat should seek to increase the number of RHA inspectors so that retirement homes under this Act can be inspected more frequently, particularly any homes which show poor compliance or worrying practices.

2. Closer collaboration between local public health agencies and Retirement Homes Act inspectors. We believe there is great opportunity for closer collaboration between RHA inspectors and our public health inspectors. First, our inspectors could share lists of retirement homes of which we are aware to ensure we are both inspecting all homes. Given our experience that some homes that should fall under the Act avoid registering, and that we are not informed of all licensed retirement homes, there is a good chance that neither of us knows of all the retirement homes that should be inspected. Second, both our teams of inspectors have overlapping responsibilities for food safety, pest control, and the physical structure and environment of the homes. Closer collaboration could allow us to support each other in these areas, and potentially even do joint inspections at times where there are concerns. Such joint inspections would allow us to leverage the regulatory powers of each type of inspector (RHA inspector and public health inspector) to foster compliance by operators. Finally, with a better awareness of each others’ roles and each others’ concerns with individual homes, we can attempt to support each other by sharing observations and concerns that each of us identifies that is the responsibility of the other to enforce. Language in the Regulation to facilitate such cooperation (e.g. information sharing, periodic joint meetings or inspections) would help develop this collaboration. Of course, much of the collaboration will also come from developing closer working relationships.
3. **Referencing Public Health Units.** In the *Regulation*, local public health agencies are referenced “public health units”. While colloquially, this terminology is often used, from a legal perspective, a public health unit is a geographical region and does not refer to any person or organization (R.R.O. 553/90: Areas Comprising Health Units). For consistency with the rest of Ontario legislation and regulation, local public health agencies should be referenced as either the Board of Health or the Medical Officer of Health. In this, we second the suggestion made by alPHa.

3. **What process do you think should be in place to ensure the legislation stays relevant, given an evolving sector and new trends that may arise (e.g. timing of future reviews)?**

   We believe that ongoing reviews are needed as this is still new legislation and more work is likely needed to optimize it as well as its implementation.

   We suggest that a process to monitor and fine-tune implementation of the Act might be useful to complement reviews of the legislation itself. As this would not involve the complexity of amending the Act or its *Regulation*, a body of stakeholders that could meet infrequently (perhaps every 6-12 months) to discuss experiences in the field and measures to make incremental improvements could be very useful.

   We do not have a strong opinion on the timing of a future review of the legislation and regulation, however, another review in five years would seem reasonable to us.

Thank you again for your interest in our input to this legislative review. Should you have any questions with our comments, please do not hesitate to contact me.

We look forward to working together to make continued improvements to the lives of seniors.

Sincerely,

[M. Mustafa Hirji, MD MPH FRCPC](#)
Associate Medical Officer of Health
Niagara Region Public Health

cc: Lorne Coe, President, Association of Local Public Health Agencies (alPHa)
    Bjorn Christensen, Chair, Policy and Advocacy Committee, Association of Supervisors of Public Health Inspectors of Ontario (ASPHIO)