



December, 2013

The Retirement Homes Act, 2010: Final Phase of Implementation **Lad Kucis**

On January 1, 2014, the final phase of the implementation of the Retirement Homes Act, 2010 (the “RHA”) is to take effect. Licensees of retirement homes are required to be compliant with these changes as of this date, the most notable of which are set out below:

Background Screening

As of January 1, 2014, licensees will be required to conduct various screening measures with respect to both new and existing staff members and volunteers.

Namely, licensees must obtain a police background check before hiring new staff members and accepting new volunteers in a retirement home. The RHA requires that these police background checks be obtained at the time of application; be conducted by a police force within the past six months; and include a vulnerable sector screen, which is much more extensive than a criminal record check.

In addition, licensees are also required to obtain a signed declaration from any staff member or volunteer who applies to work in the retirement home, as well as from any staff member or volunteer who already work in the retirement home. This declaration is to disclose the following:

- every offence that the person has been charged with under the Criminal Code, the Controlled Drug and Substances Act, and the Food and Drug Act, as well as the outcome of the charge;
- every offence for which the person has been convicted under the above statutes;
- every Order of a judge or a justice of the peace with respect to an offence under the above statutes, including a peace bond, probation order, prohibition order or warrant; and
- every restraining order made against the person under the Family Law Act or Children’s Law Reform Act.

The above described declaration applies to conduct since the person’s last police background check, or if no background check has been conducted, since January 1, 2014.

Although licensees are expected to obtain the above described declarations from time to time, all staff members and volunteers also have a personal, ongoing obligation to immediately provide such a declaration each time that:

- they become aware that a charge has been laid or an order has been made against them;
- a conviction has been entered against them; or
- a charge has been disposed of.

In order to protect against potential liability, licensees should request declarations on no less than an annual basis and should also advise staff members and volunteers about their new mandatory reporting obligations as soon as possible.

In considering this item, licensees should also be aware of the fact that certain categories of persons are exempt from the police background check and declaration requirements, including the following:

- persons who are under 18 years of age;
- members of the College of Physicians and Surgeons of Ontario, the College of Nurses of Ontario and the Ontario College of Pharmacists;
- contract employees or persons working pursuant to a third party contract that provide “occasional maintenance or repair services” and do not provide direct care to residents; and
- other persons who do not meet the definition of “staff” or “volunteer”.

Finally, it is also important to note that the RHA does not specify what actions are to be taken by a licensee if a police background check or a declaration yields negative information. In this regard, licensees must make their own decision as to what, if any, response to take.

Establishment of RHRA Complaints Process

As of January 1, 2014, the Retirement Homes Regulatory Authority (the “RHRA”) will be required to review all complaints that it receives regarding an alleged contravention of a requirement of the RHA. Although the RHRA has not yet communicated its complaint intake and processing procedures, the RHA requires that it adhere to the following general framework:

- all complaints are to be investigated by the Registrar of the RHRA (the “Registrar”) in a prompt manner;
- the Registrar may request the licensee to provide information that is relevant to the complaint, provided that the request is made in writing and sets out the nature of the complaint;
- upon receiving a complaint, the Registrar is required to conduct an immediate inspection of a retirement home if it receives information indicating that any of the following may have occurred:
 - 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 of the retirement home that resulted in harm or a risk of harm to the resident;
 - contravention of a requirement of the RHA, or other unlawful conduct, that resulted in harm or a risk of harm to a resident; and
 - any other matter that may be specified in the regulations to the RHRA.
- upon receiving a complaint, the Registrar may do one or more of the following:
 - make inquiries relating to the complaint;
 - conduct an inspection of the retirement home and/or any place that is operated in connection with the retirement home and from which services are provided to the retirement home;
 - attempt to mediate or resolve the complaint;
 - provide information to, or attempt to educate, the complainant, the licensee or other persons;

- give the licensee a written warning that if the licensee continues with the activity that led to the complaint, it may take action against the licensee; and
- take other action that is set out in the RHA, including issuing an order against a licensee (which order can be appealed by a licensee to the Licence Appeal Tribunal);
- if the Registrar decides to take no action with respect to a complaint, the complainant is entitled to request that the complaint be reviewed by a Complaints Review Officer, which request must be made within 60 days of being notified of the decision of the Registrar;
- the Complaints Review Officer is entitled to obtain all information available to the Registrar both with respect to the subject matter of the complaint, as well as the retirement home and licensee in question;
- after reviewing the complaint, the Complaints Review Officer is to do one of the following:
 - take no further action - if it is determined that the Registrar's consideration of the complaint and the decision to take no further action was reasonable; or
 - refer the complaint back to the Registrar - with a recommendation that the Registrar take further action in respect of the complaint, if it is determined that the Registrar's consideration of the matter and the decision to take no further action was not reasonable; and
- the decision of the Complaints Review Officer is final and is not subject to appeal.

Notwithstanding the forthcoming RHRA complaint regime, as described above, licensees should be reminded that retirement homes are already required to have their own written procedures regarding the process to be followed in the event of a complaint. These written procedures must be included in the package of information provided to residents.

Plan of Care Approval

A Plan of Care for a resident of a retirement home must now also be approved by a member of the College of Physicians and Surgeons of Ontario or the College of Nurses of Ontario, or a person acting under the supervision of one of these persons.

Please note, however, that it also remains necessary for a Plan of Care to be approved by the resident who is the subject of the Plan of Care or their Substitute Decision Maker.

Extra Expense Insurance

All licensees must ensure that they maintain "extra expense insurance" from an authorized insurance company. Under the RHA, "extra expense insurance" means an insurance policy that will provide for the costs of providing reasonable alternate accommodation and care for at least 120 days, if as a result of loss or damage to the retirement home, the licensee is unable to safely provide the normal accommodation and care to its residents and the loss or damage is a peril for which insurance is reasonably available.

Whistleblowing

The Registrar may conduct an inspection of a retirement home if it receives a complaint regarding alleged retaliation or threats to retaliate against a person for providing evidence in a proceeding, including an RHA proceeding, or for disclosing information to the Registrar or an RHRA investigator.

Lad Kucis is the Co-Chair of the Health Law Group at Gardiner Roberts LLP and provides advice and representation to retirement home operators with respect to regulatory compliance, complaints and risk management. He can be reached by telephone at (416) 864-3114 or by email at lkucis@gardiner-roberts.com.

**Please note that this Legal Bulletin is being provided for information purposes only and is not intended to be construed as legal advice.*



GARDINER ROBERTS