

Risk Officer
160 Eglinton Avenue E.,
Fifth Floor
Toronto, ON
M4P 3B5 www.rhra.ca
T 1-855-275-7472
F 416-487-1223

RHRA
Retirement
Homes
Regulatory
Authority

Agent de gestion des risques
160, avenue Eglinton Est,
5^e étage
Toronto, ON
M4P 3B5 www.ormr.ca
Tél. 1-855-275-7472
Télé. 416-487-1223

ORMR
Office de
réglementation
des maisons
de retraite

March 28, 2017

Honourable Dipika Damerla
Minister of Seniors Affairs
7 Queen's Park Cres. E.
Frost Building South, 6th Floor
Toronto, ON
M7A 1Y7

Dear Minister Damerla,

Re: RHRA Risk Officer Annual Report 2016-17

I am pleased to provide you with my third annual report as Risk Officer for the Retirement Homes Regulatory Authority (RHRA). The cooperation of the RHRA Board over the past year is acknowledged and appreciated, as is the ongoing support and assistance provided by the Authority's CEO/Registrar and her staff.

My review focused primarily on the Emergency Fund, specifically its administration and funding. The scope of my review was in accordance with my Workplan for 2016-17, which was approved by the RHRA Board in February 2016.

The Report sets out my findings and includes a number of recommendations and I would be pleased to meet at your convenience, to provide a briefing if desired.

In keeping with the terms of the Memorandum of Understanding respecting my appointment and role, a copy of my Report is being sent concurrently to the Board, through its Chair, John J. Rossiter.

Yours sincerely,



Deanna L. Williams
Risk Officer, RHRA

cc. Marie-Lison Fougère, Deputy Minister, Ministry of Seniors Affairs
John J. Rossiter, Chair of the Board, RHRA
Bonnie Rose, CEO and Registrar, RHRA

Risk Officer
160 Eglinton Avenue E.,
Fifth Floor
Toronto, ON
M4P 3B5 www.rhra.ca
T 1-855-275-7472
F 416-487-1223

RHRA
Retirement
Homes
Regulatory
Authority

Agent de gestion des risques
160, avenue Eglinton Est,
5^e étage
Toronto, ON
M4P 3B5 www.ormr.ca
Tél. 1-855-275-7472
Télé. 416-487-1223

ORMR
Office de
réglementation
des maisons
de retraite

March 28, 2017

Mr. John J. Rossiter, Chair
Board of Directors
Retirement Homes Regulatory Authority (RHRA)
160 Eglinton Ave East, Suite 500
Toronto, ON
M4P3B5

Dear John,

I am pleased to provide you with my third annual report as Risk Officer for the Retirement Homes Regulatory Authority (RHRA). The cooperation of the RHRA Board over the past year is acknowledged and appreciated, as is the ongoing support and assistance provided by the Authority's CEO/Registrar and her staff.

My review focused primarily on the Emergency Fund, specifically its administration and funding. The scope of my review was in accordance with my Workplan for 2016-17, which was approved by the RHRA Board in February 2016. The Report sets out my findings and includes a number of recommendations.

In keeping with the terms of the Memorandum of Understanding respecting my appointment and role, a copy of my Report is being sent concurrently to the Hon. Dipika Damerla, Minister of Seniors Affairs.

Yours sincerely,



Deanna L. Williams
Risk Officer, RHRA

cc. Bonnie Rose, CEO and Registrar, RHRA

Risk Officer
Annual Report 2016/2017

Submitted by Deanna L. Williams, Risk Officer

March 2017

Introduction

The Retirement Homes Regulatory Authority, RHRA (“the Authority”) was established under the Retirement Homes Act, 2010 (“the Act”) and, while independent from government, is subject to government oversight through a written Memorandum of Understanding (“MOU”). The Authority administers the Act and its regulations, and oversees the enforcement of provisions contained within. A key duty of the Authority is to ensure the Fundamental Principle of the Act is upheld:

“The fundamental principle to be applied in the interpretation of this Act and any regulations, order, or other document made under Act, is that a retirement home is to be operated so that it is a place where residents live with dignity, respect, privacy, and autonomy, in security, safety and comfort and [where they] can make informed choices about their care options”

The Authority carries out its legislative and regulatory obligations by ensuring that only retirement homes who meet the licensing criteria in the Act receive and maintain a licence to operate in Ontario. With some exceptions, a *retirement home* is defined in the Act as:

A building, group of buildings or part of a building, with one or more rental units:

- *occupied primarily by persons 65 years of age or older;*
- *occupied or intended to be occupied by at least 6 persons who are not related to the operator of the home; and*
- *where the operator of the home makes available at least two care services (of those identified in the Act), directly or indirectly, to residents.*

A retirement home does not include homes/buildings that receive certain government funding or are governed by certain other laws, such as the *Homes for Special Care Act, 1990* and the *Long-Term Care Homes Act, 2007*.

The Risk Officer

The Act requires that an independent, statutory officer- a Risk Officer- be appointed by the Authority and that the appointment be approved by the Minister. The duties of the Risk Officer, who was duly appointed in 2014, are set out in section 24(3) of the Act as follows:

The Risk Officer:

- (a) shall review and assess the effectiveness of the Authority’s administration of this Act and the regulations, including the Authority’s activities and proposed activities related to ensuring that licensees meet the care standards and safety*

standards set out in this Act and the regulations, and respect the rights of residents set out in the Act and regulations, and;
(b) shall perform the other duties and exercise the other powers that are prescribed, 2010, c11, s 24(3).

The Risk Officer is appointed by the Board of Directors of the RHRA, in accordance with provisions set out in the Act, the MOU between the RHRA and the Minister responsible for Seniors Affairs, and RHRA's by-law Number 1. The Risk Officer is accountable to and reports to the RHRA Board through its Governance and Regulatory Affairs Committee (GRAC). Notwithstanding these reporting requirements, it is important to note that the Risk Officer role is established as both statutory but also independent- with the expectation that the Risk Officer is able to carry out her role in an independent manner.

My work plan for the 2016/17 year was approved by GRAC and the RHRA Board in the spring of 2016 with an anticipated timeline for receipt of the preliminary report to GRAC in early 2017, and the final report to be presented to the Board by March 31, 2017.

Scope of Review and Methodology

The primary focus of my review this past year was on the Emergency Fund, ("the Fund"), a requirement under s.27 of the Act, with specific attention to the Authority's administration and funding of the Fund.

Much of my work involved an extensive review of the existing legislation, applicable regulations and policies relevant to the establishment and administration of the Emergency Fund. I also reviewed the files pertaining to payments that had, to date, been approved by the Registrar and paid to residents or their caregivers – primarily to understand the nature of incidents leading to the requests for payment, but also to look at consistency with respect to application of the processes employed within the Authority.

Meetings and subsequent discussions with the Registrar and Senior Management team members within the Authority proved very helpful in my understanding respecting the current policies and processes approved by the Board and the history leading to those. I was also able to identify some of the factors that I believe pose some challenges to the Authority and the Board with respect to administration, and funding of the Fund going forward.

Legislative Context

The Retirement Homes Act, 2010, s.27 (1) and (2) establishes the Emergency Fund ("the Fund") and requires the Authority to make contributions, hold the fund in trust, make payments from the Fund, require repayments into the Fund, and otherwise manage the Fund in accordance

with the regulations. The applicable requirements in the Act are:

27 (1) A fund is established under the name Retirement Homes Regulatory Authority Emergency Fund in English, and Fonds d'urgence de l'office de réglementation des maisons de retraite in French, 2010, c 11, s 27 (1)

27 (2) The Authority shall make payments into the Fund, hold the property of the Fund in trust, make payments out of the Fund, require repayment to the Fund and otherwise administer and manage the Fund in accordance with the regulations. 2010, c 11, s 27(2)

Regulatory Context

The requirements regarding administration of the Fund are set out in Ont. Reg. 166/11 under s.64 as follows:

64.1 (1) The Authority shall hold the Fund in trust for the benefit of residents and former residents whom the Registrar approves to receive the benefit of a payment under s 64.3 or 64. 4.

(2) The Fund consists of money paid into the Fund under subsection (3) or (4), all administrative penalties collected by the Authority and all income on money paid into the Fund.

(3) The Authority may make payments into the Fund.

(4) The Authority may borrow money to supplement the Fund and shall pay the borrowed money into the Fund.

(5) No payment shall be made from the Fund to satisfy or settle any claim or judgement or other court order resulting from the fraud, negligence or willful misconduct of the Authority, its officers, directors, employees or agents.

(6) The Authority shall hold the Fund in an interest-bearing account at a financial institution as defined in subsection 57(1).

(7) At the Minister's request, the Authority shall make available to the Minister any information, books, records or documents that it keeps respecting the affairs of the Fund.

(8) The Authority shall have the Fund audited annually by a public accountant licensed under the Public Accounting Act, 2004 and shall include the results of the audit in the Authority's annual report required under s.31 of the Act.

(9) At the Minister's request, the Authority shall immediately have the Fund audited in

the manner that the Minister requires and shall make the results of the audit immediately available to the Minister.

(10) The Authority shall assist the auditors in performing any audit requested by the Minister under subsection (9) and shall provide any books, records or information that may be required to complete the audit.

Accordingly, the Emergency Fund consists of monies that the RHRA Board approves to dedicate to the Fund from operations/or reserve funds; all Administrative Monetary Penalties (AMPs) collected by the Authority; any monies the Authority borrows for the Fund and any income earned on money paid into the Fund.

Different Payments May Be Made: Claims and Emergency Payments

Claims

Claims are permitted to provide individuals who are, or were residents of a retirement home immediately before the event giving rise to the claim arose, with compensation to assist with additional costs that an individual incurred to obtain reasonable alternate accommodation and care for a period of no more than 120 days if, as a direct result of emergency circumstances arising from loss or damage to the home, the operator was unable to provide normal accommodation and care in the home or if the home is unable to provide alternate accommodation. Conditions that must be met include: that a claim must be made in the appropriate form and manner, no later than 90 days following the end of the period for which the compensation is being claimed; and that both the individual making the claim and the operator of the retirement home have taken, before and after the event, all reasonable steps to mitigate costs incurred by the individual. As well, any other documents or information requested by the Registrar to assist in deciding whether to approve a claim for compensation, must have been provided. Provisions are set out under s.64.3 as below:

64.3 (1) If the Registrar receives a claim from an individual for the payment of compensation and is of the opinion that the following criteria are satisfied, the Registrar may approve the claim and direct the Authority to pay a specified amount to the claimant provided:

The Fund has the capacity to make the payment¹ and the total amount paid to a claimant shall not exceed \$10,000.00.

¹ . Ont. Reg. 53/12, s.13

Emergency Payments

In the absence of a claim for any compensation being made, the Registrar has the authority to initiate an emergency payment from the Fund to an individual (resident or former resident) if the operator is unable to safely provide the normal accommodations or care in the home to the individual as a direct result of emergency arising from loss or damage to the home or from abuse or neglect resulting in a serious and imminent risk of harm to the individual – if payment would, in the Registrar’s opinion, enable the individual to find, move to, or pay for reasonable alternate accommodation or alternate care providers; and if the Fund has the capacity to make the payment. Provisions set out in s.64.4 as below:

64.4 (1) The Registrar may approve a resident or former resident of a retirement home to receive the benefit of payment from the Fund and may direct the Authority to pay specified amounts to the individual or to other specified persons for the benefit of the individual if the Registrar is of the opinion that the following conditions have been met:

The Fund has the capacity to make the payment, and the total amount in respect of an individual that is paid to or for the benefit of the individual does not exceed \$2,000.00.

The Emergency Fund: Background

The Emergency Fund is established to allow the Authority to provide some compensation/funds to assist residents of retirement homes find, move to and/or pay for alternate accommodation or access alternate care provider(s), due to an emergency situation. The Fund allows for two different kinds of payments to be made, a claim which is filed by a resident or his/her agent on their behalf; the claim may be made for up to 120 days, is only paid upon submission of a claim, and the maximum amount that may be paid out for any one claim is \$10,000.00. A payment on the other hand, can be approved by the Registrar, whether or not a claim has been made; is generally meant to cover emergency and immediate costs of alternate accommodation or care and the maximum amount that may be paid out as a payment for any one claim is \$2,000.00.

The RHRA Board established the Fund in October 2012, and approved an initial payment of \$10,000 into the Fund. In addition, and in accordance with policy and requirements under the Act, AMP’s collected by the Authority during the 2012-13 year – totalling \$450.00 – were also added to the Fund. On January 1, 2014, legislative provisions came into effect, permitting claims and payments to be accepted by the Authority and paid out from the Fund. Subsequently, the Finance and Audit Committee, and the Board sought two opinions from external experts respecting risk exposure to help guide a policy regarding RHRA’s contributions to the Fund.

Both external experts recommended funding options with both short and long term goals. Expert "A"'s analysis suggested that claims against the funds would be most likely where homes did not have 'adequate' Extra Expense Insurance, or EEI.* (more below)

Expert "A" further suggested that larger homes (greater than 100 residents) present greater potential exposure because of the greater number of residents, but that the likelihood of claims are less because:

- the larger homes and chain-owned homes are more likely to have sufficient EEI coverage;
- they are more likely to have the capacity to provide alternate accommodation at other locations; and
- they are more likely to have loss abatement systems such as sprinklers.

Expert "B" recommended, based on its analysis, a minimum funding target with a goal to plan for a fully funded target. The analysis considered the total capacity of each home, the limit of claims to \$10,000.00 per claim; the geophysical location of homes (near other homes ie. potential alternate accommodation; flood or other risks); and risk analysis based on capacity (of each home) and frequency (that an occurrence was likely to occur).

The Board considered various options regarding establishment of minimum and fully funded targets, development of a contributions policy to achieve these, and a time frame that would be considered appropriate for reaching the goal of a fully funded target. In 2013-14, the Board approved a one-time contribution of \$240,000.00 and \$5,500.00 from AMP's were also added to the Fund. An RHRA Emergency Funds Contributions Policy was initially approved by the Board in November 2014.

In 2014-15, \$14,290.00 collected from AMP's , and applicable interest, constituted the total amount paid into the Fund. In 2016, the Board approved an additional contribution of \$300,000 to be paid into the Fund, and an additional \$5,665.00, collected through AMP's, plus applicable interest, was also added to the Fund.

The Authority's Annual Report 2015-16, reports the total amount held in the Fund, at the time of reporting, to be \$566,280.00. In 2015-16, the Registrar approved a total of 16 payments pursuant to abrupt closures and paid a total of \$25,839.00 in payments out of the Fund. To date, the Authority has not received or paid out on any claims made against the Fund.

The RHRA Board has, as noted above, approved three one-time contributions to the Fund; however, at the time of this review, no defined policy respecting planned, targeted funding of the Emergency Fund had yet been approved.

Observations and Comments

Extra Expense Insurance (EEI)

Ont. Reg 166/11, s.5.1 (1) requires that all operators of licensed retirement homes must carry Extra Expense Insurance (“EEI”) as a requirement of licensure. The EEI must be obtained through a licensed insurer who undertakes to pay for additional costs of providing reasonable alternate accommodation and care to residents of a home (for a period of no less than 120 days) where, as a result of loss or damage to the home, the operator is unable to safely provide normal accommodation or care to residents and where the loss or damage is a peril that would reasonably be covered by insurance.

Claims made for compensation from the Fund may be made as a result of loss or damage to the home where the operator is unable to safely provide normal accommodation or care to residents and also for up to a maximum period of 120 days. These claims would reasonably be expected to be made where no or insufficient EEI is in place, where an insurer considers that the loss or damage to a home is not ‘insurable’ or where a home has abruptly closed and no compensation from EEI or the operator is available.

The potential number of claims made against the Fund and/or the determined need for payments made from the Fund may be increased by several factors:

1. There is no required minimum amount of EEI that an operator must carry. As noted in the analysis of Expert “A”, inadequate EEI coverage, or indeed, no EEI coverage, would reasonably increase the risk of increased number of payments being required from the Fund that is administered by the Authority.
2. Although it is a requirement under s.5.2 (1) of the regulation that every licensee of a retirement home shall, at all times, maintain in full force and effect EEI from an authorized insurer, there was, in my view, a relatively high degree of non-compliance in 2015-16 among operators/licencees in providing requested evidence of current and paid up EEI policies to the RHRA. Outstanding EEI certificates for over 300 operators/licencees in 2016 prompted the Authority to initiate its Extra Expense Insurance Automation Project.*(see note below)
3. Self-declaration by operators/licencees that EEI coverage is in place is requested at the time of initial licensure and annually. Although, it is a requirement for the issuance of a license to operate a specific retirement home that the applicant has demonstrated he/she has obtained EEI with respect to the home and will maintain it in full force, for as long as they operate the home, the requirement is not included in the twenty critical areas of assessment that currently guide routine inspections. While inspectors could

look for evidence of current and paid up EEI policies during inspections, it was my observation, during my previous review, that this is not part of the normal inspection. The RHRA does have the authority to review the scope of coverage and it is my understanding that the new automation program is collecting information that will help the RHRA to define appropriate quality of coverage.

4. There is currently no requirement defining what EEI coverage must include, and a logical assumption could be made that, in a number of cases, residents may not be insured or protected against events that arise from an operator's own negligence, incompetence, poor business practices or fraud. No information to either confirm or refute this was found, but in my view, the assumption is, nevertheless, worth identifying. The RHRA might, in future, consider development of a guideline/proposal to homes with respect to what EEI policies should include, for consistency.

Note: *The Authority has pro-acted to explore ways to increase levels of compliance. Since the summer of 2016, RHRA has undertaken two new projects to improve both compliance and stakeholder outreach. The objective of the Email and Extra Expense Insurance Automation Project is to achieve greater corporate automation to streamline and enhance compliance and the Authority's communications by:

- using email as the primary communications tool between the RHRA, operators and licencees;
- using automation to send notices, reminders, and ultimately collect EEI certificates with a view to gaining compliance of all operators; and
- enhancing RHRA's risk management by ensuring up-to-date copies of all EEI certificates and other relevant information in real time.

Emergency Fund Payment Policy and Procedures

In anticipation of the legislation coming into force on January 1, 2014, the Authority developed a policy setting out the principles and rules governing a payment made for the benefit of a resident pursuant to s.64.4 of Ont Reg 166/11. The policy, in accordance with best practices, has been revised and improved as appropriate, to guide the Registrar in the exercise of her discretion to make payments in a manner that is consistent with the obligations and principles of the Act and its regulation.

The current policy sets out four main criteria to guide the Registrar in deciding to make a payment(s). These four criteria are:

- a retirement home operator is unable to safely provide normal accommodation or care as direct result of emergency circumstances (defined in the policy);

- payment would enable or assist a resident to find, move to or pay for reasonable alternate accommodation or access to alternate care providers;
- payment in the circumstances would be consistent with the fundamental principle of the Act; and
- the Fund has the capacity to make the payment(s).

The existing policy and procedures are comprehensive, setting out 27 various steps and considerations to be taken. Also included in the Policy are 6 distinct reference documents or 'Schedules' to support decision-making.

Registrar's Discretionary Payments

My review of files pertaining to the 16 payments made by the Registrar in 2015-16 clearly demonstrated a consistent approach and application of the current policy and following of procedures set out within it.

Transparency and Communication regarding the Fund

The Authority demonstrates, in my view, a clear commitment to protect the interest of residents through its efforts to inform residents and stakeholders about the Emergency Fund. In my review of the RHRA website, I found information about the Fund, its purpose and use, and associated information about both claims and payments easily, with all relevant information set out under "Frequently Asked Questions". That the RHRA has set up a dedicated line for residents, stakeholders and the public to call with questions or requests for information (1-855-ASK-RHRA) is noteworthy and in my view, aligned with best practices for an accountable regulatory authority.

The RHRA Annual Report highlights activity in contributions to and payments made from the Emergency Fund in a manner that I believe embraces the spirit of transparency and openness. In providing comprehensive information about the Fund and the specific criteria under which claims and payments may be processed, the Authority is demonstrating value in its regulatory work, through the establishment of an Emergency Fund:

- to provide relief, assistance and continuity to residents in need;
- in a manner that should ensure that claims or payment requests made are both appropriate; and
- in alignment with the expectations set out in the Act and regulation.

Emergency Fund Contributions Policy: Options and Recommendations

The Board approved its first policy to guide Emergency Fund Contributions in November 2014 and a new policy, with some revisions, was approved in May 2015. In 2016, the Board conceptually approved a further revised policy. While the Board has, as previously noted, approved three distinct, one-time contributions to the Fund, a proposed strategy and methodology to ensure sufficiency and viability of the Emergency Fund for years to come, has not yet been defined.

Options

Further to the external analysis submitted by two firms, several options were proposed and considered. Options considered at the time included:

- a commitment to annual, budgeted contributions to the Fund;
- a combination of annual contribution and a dedicated line of credit (for the Fund);
- a combination of annual contribution and a draw from internally restricted operations reserves;
- a combination of annual contribution and a specifically established internal emergency reserve which could contribute to the Fund/secure a line of credit; and
- a secure loan to meet a funding target (not considered a viable option).

Recommendations

A valid and defensible plan to ensure the sufficiency and financial viability of the Emergency Fund for years to come should be developed and approved by the Board as soon as possible. The Board could, respectfully, consider a two-step process, as follows:

1. Establish a funding target based on the appropriate expertise. The figures and data respecting payments and the nature of events leading to payments over the past three years since enabling legislation came into being would be useful in assisting the Board in determining what the desired full funding target should be. It is recommended that the Board set a funding target as early as possible in 2017.
2. Establish a plan to get to the desired target. The Board already has considered the proposed options that are listed above.

Acknowledgements

I would like to take the opportunity to thank Bonnie Rose, CEO and Registrar of the Authority and her senior management team, for their ongoing support and willingness always to accommodate my requests for meetings, files and information and for the comprehensive and complete briefing on the Emergency Fund, which provided a solid foundation for my review. The support and guidance of Barbara Sullivan, GRAC Chair, and the members of GRAC throughout this past year, is also appreciated. While my work as Risk Officer is carried out in a manner that assures independence from the Authority's Board, Committees and Staff, I do rely, throughout my reviews and assessment, on the Board's collective support, which is acknowledged and much appreciated.

Deanna L. Williams, Risk Officer

2017