

PLAIN-LANGUAGE GUIDE of the *Retirement Homes Act, 2010*

Disclaimer

This guide is solely for educational purposes. It is not legal or professional advice. Readers must not rely on this guide to provide such advice, either generally or with respect to a particular question or issue. The guide has no legal effect. It is not an official legal interpretation of the *Retirement Homes Act, 2010* (the “Act”). Refer to this guide in conjunction with the Act and its regulations. Seek legal advice if you have questions about the application or interpretation of the Act.

Introduction

This guide is a general overview of the new *Retirement Homes Act, 2010* and its regulations (the “Act”). The purpose of the guide is to educate people about the Act. It does not explain every section of the Act. The goal is to give readers a basic understanding or familiarity with the Act. Although the guide may help owners and staff members of retirement homes and others to learn about Act, it does not replace a reading of the Act itself. If you want to understand how the Act will specifically affect you, your home, or someone you care for, you should refer to the Act and regulations directly. Where you have questions, you can contact the Retirement Homes Regulatory Authority (the “RHRA”).

The guide uses the term “home” to refer to a retirement home, including a licensed home under the Act. It also refers to licensed homes as “licensees”. “Resident” refers to a resident of a retirement home. The term “Act” includes the regulations under the Act. Sometimes the guide will refer to the “Act and regulations” to stress that the reader should refer to both the Act and the regulations. “Regulation(s)” refers to Regulation 166/11 under the Act.

Many of the requirements in the Act that relate to what a home must do for, or give to, residents also refer to formal “substitute decision makers” (SDMs). The guide does not set out the obligations of homes with respect to SDMs. Readers should note that in many contexts, homes have similar obligations to SDMs as they do for residents, particularly with respect to what information the home must give to a resident and SDM, if any.

The guide has four main parts:

1. The Act and the RHRA

This part provides a brief history of the Act. It also describes the RHRA and its mandate.

2. Licensing

This is a summary of the process and requirements in the Act for licensing retirement homes. It also explains the nature of a licence under the Act, and some of the things that licensees and the RHRA must do in connection to a licence.

3. Consumer Protection

This part describes many of the protections for residents under the Act that do not relate to care and safety. These protections relate to such things as disclosure of information, holding money in trust, and a bill of rights for residents.

4. Resident Care and Safety

The Act contains care and safety standards to protect residents. This part describes these standards and the other requirements in the Act that relate to the care and safety of residents.

The Act and the RHRA

The Act is law that regulates retirement homes in Ontario. It became law in June 2010. The Act is available on the RHRA's website (www.rhra.ca) and through the e-laws website (www.ontario.ca/laws).

The Act requires a person to have a licence to operate a retirement home. Licensees must meet the standards in the Act that apply to the care services the home offers to residents. Licensees must also meet safety standards to protect residents generally. The fundamental principle of the Act is set out below.

Fundamental Principle of the Act

The fundamental principle to be applied in the interpretation of this Act and any regulation, order or other document made under this 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 can make informed choices about their care options.

The RHRA administers the Act and is responsible for licensing and regulating retirement homes on behalf of government. The RHRA is a not-for-profit corporation, with its own board of directors. It is independent of government but is accountable to government through a written agreement. The RHRA also provides education about the Act, information to the public about retirement homes and gives policy advice to government about retirement homes. The RHRA's duties under the Act include licensing homes, handling complaints about homes and enforcing the standards in the Act.

The RHRA can set and charge fees for anything it does in administering the Act.

The RHRA board of directors appoint a Registrar. The Registrar performs certain duties under the Act. These duties include making decisions about whether to issue licences and whether to issue an order against a home for non-compliance with the Act.

Licensing

Licensing Requirements and Nature of the Licence

Under the Act, a person must have a licence to operate a retirement home. A summary of the definition of “retirement home” in the Act and regulations is below.

Definition of Retirement Home (summary)

A retirement home is a building, group of buildings, or a part of a building (with one or more rental units):

- 1. occupied primarily by persons who are 65 years of age or older;**
- 2. occupied or intended to be occupied by at least six persons who are not related to the operator of the home; and**
- 3. where the operator of the home makes at least two care services available (directly or indirectly) to residents.**

A retirement home does not include buildings or parts of buildings that receive funding or are governed by certain other laws, for example the *Homes for Special Care Act* and the *Long-Term Care Homes Act, 2007*.

To obtain a licence, a person must submit an application to the Registrar of the RHRA. The Registrar will decide whether to issue a licence on the basis of these three criteria:

1. the past conduct of the people who own or control the operations of the home;
2. the ability of the home to provide care services; and
3. competency to operate the home in a responsible manner in accordance with the Act.

The Registrar may issue a licence with conditions.

The Registrar’s decisions to refuse to issue a licence or to issue a licence with a condition, may be appealed through the Licence Appeal Tribunal (LAT). .

A person must have a licence to operate a retirement home in Ontario and must meet the standards in the Act.

A licence relates to a specific home and does not transfer to another owner through a purchase or sale of the home. When a licensee sells the home, the new owner must apply for a licence. When selling a home, the licensee must take certain steps before closing a home. These steps include giving the RHRA a transition plan and giving residents advance written notice.

The Act requires the RHRA to keep a public register of information about both applicants and licensees. This information includes basic information, such as name, address, care services and number of residents. It also includes a summary of inspections reports and any orders against the home under the Act.

Inspections and Enforcement

The Registrar may appoint inspectors under the Act. Inspectors have powers to enter and inspect homes. An inspection may occur for different reasons. It may be in response to a report of harm or risk of harm to a resident. It may also be to monitor compliance with the Act. The Act requires that all homes must receive at least one inspection every three years.

The Registrar may make certain orders to respond to a breach of the Act. The Registrar may order a licensee to do something or refrain from doing something to achieve compliance with the Act. The Registrar may also order a licensee to pay a financial penalty for breaching a requirement of the Act. In addition, the Registrar has the power to make an order revoking a licence.

The RHRA may enter and inspect a home that it suspects may be operating without a licence. The Registrar can order the home to apply to the RHRA for a licence by a certain date, or to cease operating as a retirement home by that date.

Reference: sections 2, 33 – 49, 76-80, 89-97, 100 & 106 of the Act; and sections 2, 3, 4.2, 5, 7, 11, 58.1, 62, 63 & 60.1 of the Regulation

Consumer Protection

There are a number of consumer protections for residents under the Act. These protections include a Residents' Bill of Rights and obligations on homes to disclose and post certain information in the home. There are also requirements in the Act for holding money on behalf of a resident and for dealing with complaints.

Residents' Bill of Rights

Section 51 of the Act sets out a Residents' Bill of Rights (the "Bill"). The Bill includes ten different rights (with some rights being a number of related rights). These include rights relating to the cost and delivery of care services the home provides to residents. The Bill also protects the privacy and lifestyle choices of residents. Other important areas in the Bill include resident rights to participate in decisions about care and to raise concerns without fear of reprisal.

Homes must respect and promote the Bill of Rights. They must post the Bill in the home and provide a copy to residents. Homes must ensure that no staff member works in the home unless they received training on the Bill.

A poster of the Bill of Rights is available on the RHRA website in the licensing section.

Reference: sections 51, 54 & 55 of the Act

Residents' Council

Homes must allow residents to establish a residents' council. Only residents may be members of a council. If residents choose to form a council, the home must appoint an assistant for the council and must not interfere with the council or charge it a fee. The powers of a resident council are set out in section 56 of the Act. These powers include informing residents about their rights and attempting to resolve disputes between the home and residents.

Reference: sections 56 – 59 of the Act and section 12 of the Regulation

Rights under the Residential Tenancies Act, 2006

Retirement homes contain rental units. The *Residential Tenancies Act, 2006* (the "RTA") applies to most residential rental units in Ontario. Many retirement homes are "care homes" under the RTA. These homes are subject to the standards for care homes set out in the RTA and must continue to meet these standards, despite having an RHRA licence. Section 52 of the Act states that nothing in the Act affects or overrides the requirements of the RTA. Section 119 of the Act clarifies that nothing in the Act affects any rights or obligations of tenants or landlords under the RTA.

Reference: sections 52 & 119 of the Act

Resident Agreement and Information

Homes must enter into a written agreement with each resident before the resident starts living in the home. The agreement must be in plain language that is clear and concise. Section 9 of the regulations sets out mandatory content for the agreement. The resident must receive a copy of the agreement.

Homes must also give each resident a package of information before the resident starts living in the home. Section 54(2) of the Act and section 10 of the regulations list the content that must be in the package. The package must be accurate and homes must revise it as necessary and provide any revisions to the resident.

Reference: section 53 & 54 of the Act and sections 8, 9 & 10 of the Regulation

Public and Posted Information

Homes must make certain information available in the home in an easily accessible location. The information is set out in section 55 of the Act. This information includes the information package for residents and RHRA inspection reports.

Section 55 also requires the home to post certain information in a conspicuous and easily accessible place in the home. This information includes the Residents' Bill of Rights, the licence for the home, and measures to take in case of fire. It also includes a sign with information about how to make reports to the RHRA Registrar relating to harm or risk of harm to residents. The sign must be a sign the Registrar provides or approves for this purpose. Section 55 of the Act and section 11 of the regulation set out the required information for posting.

Reference: section 55 of the Act and section 11 of the Regulation

Complaints

Section 73 of the Act requires homes to have a written procedure for a person to complain to the home about the operation of the home. The procedure must include the way in which the home will deal with complaints. Section 59 of the regulations sets out requirements for the way homes deal with complaints. The requirements relate to such matters as the timing of investigations, response to the complaint, and records and reviews relating to complaints.

Reference: section 73 of the Act and section 59 of the Regulation

RHRA Complaint Process

If the Registrar receives a complaint about an alleged breach of the Act, the Registrar must review the complaint. The Registrar may take certain actions set out in the Act to respond to a complaint. These actions include conducting an inspection of the home, and giving the home a written warning. The Registrar may also educate the home or attempt to mediate the complaint. The Registrar may decide to take no further action in response to a complaint, in which case the person who made the complaint may seek review from a Complaints Review Officer (CRO). The Act requires the RHRA board of directors to appoint a CRO. (This section does not come into force until January 1, 2014.)

Reference: sections 25 & 81-88 of the Act

Resident Trust Accounts

Section 72 of the Act requires a home to establish a trust account for any money that it holds on behalf of one or more residents. Section 57 of the regulations sets out rules for trust accounts. The account must be at a financial institution, such as a bank or credit union. The account must not bear interest or exceed deposit insurance limits. A home may not mix resident funds that it holds in trust with other funds or accounts of the home. The maximum amount that a home can hold in trust for any resident at any time is \$10,000, and the home cannot charge transaction fees. The regulations permit a home to charge a reasonable fee for holding money in trust. Homes must have written policy and procedures for managing trust accounts and petty cash.

A resident may authorize the home to withdraw money from his or her trust account to pay for rent, care services or other legitimate charges. This authorization must be in writing. The home does not have to provide a receipt for authorized withdrawals. However, the home must account for the withdrawals in a quarterly statement to the resident. The Registrar of the RHRA has the power to request an audit of the trust accounts and require that the results be made available for review by the Registrar.

Reference: section 72 of the Act and section 57 of the Regulation

Resident Care and Safety

The regulations set out standards for care and safety in homes. There are standards that apply to the different care services in the Act. There are also standards relating to safety plans, temperature, food preparation and other areas. In addition, there are standards for training and screening of staff.

Care Services and Care Standards

The Act lists 13 different types of care services and the regulation sets out the standards for those care services. The care services are set out in section 2 of the Act and section 2 of the regulation. The standards for care services are set out in section 29-42 of the regulation. The home must meet the care standards that apply to any of the care services that it offers to residents.

Table 1: Care Standards

Care Service	Regulation Section (care service standard)
Nursing service (provided by a registered nurse)	28
Medical service (provided by a registered physician)	28
Pharmacy service (provided by a registered pharmacist)	28
Administration of a drug	29 – 33
Assistance with feeding	34
Assistance with bathing	35
Continence care	36
Assistance with dressing	37
Assistance with personal hygiene	38
Assistance with ambulation	39
Provision of a meal	40
Dementia care	41
Skin and wound care	42

A resident may choose to receive care services from an external care provider. An external care provider is a person who provides a care service to a resident, but is not the licensee of the home, a staff member or volunteer of the home, or a person who provides care in the home under a contract with the home. Under section 61 of the Act, the home must not interfere with the resident's choice or the delivery of the care service by an external care provider, unless it is necessary to protect the resident from harm. Section 63 of the Act requires a home to provide available information to a resident about external care providers at the request of the resident.

Section 44 of the Act requires a home to provide written notice to residents before reducing the number of care services it offers. The home must provide the notice 90 days in advance of reducing the care services.

Reference: sections 2, 44, 60, 61 & 63 of the Act and sections 2, 6, & 28-42 of the Regulation

Safety Standards and Plans

Safety Standards

Section 60 of the Act requires a home to meet safety standards. These standards are set out in sections 16 to 23 of the regulation. The standards relate to a number of areas, including temperature control, food preparation and falls prevention. The standards focus on common areas of the home, rather than resident suites. Table 2 is a summary of the safety standards in the Act.

Table 2: Safety Standards

Standard	Regulation Section	Summary
Temperature control	16	Procedures to respond to extreme temperature conditions
Cleanliness	17	Keep common areas of the home clean and sanitary (e.g. floors, linens and bathrooms)
Pest control	18	Develop, document and implement pest control procedures
Maintenance	19	Keep the building and operational systems in good repair
Food preparation	20	Safe handling, storage and disposal of food, cleaning and sanitizing of dishes and equipment, and food service worker certification
Hazardous substances	21	Label and prevent access to hazardous products and substances
Risk of falls	22	Prevent and respond to resident falls
Behaviour management	23	Manage and monitor resident behaviours that pose a risk to residents

Reference: section 60 of the Act and sections 16 – 23 of the Regulation

Safety Plans

Emergency Plan

Section 60 of the Act requires homes to have an emergency plan and an infection control program. Sections 24-27 of the regulation set out requirements for the plan and program.

The regulations set out requirements for all homes with respect to emergency plans. These requirements include testing the plan, planned evacuation once every two years, and record keeping. There are also different requirements that apply depending on the size of the home (10 or fewer residents, and more than 10 residents). Both sizes of home must consult with agencies and partners who may be involved in responding to an emergency.

Infection Prevention and Control Program

Section 27 of the regulation sets out requirements for an infection prevention and control program. The home must consult at least once per year with the local medical officer of health (or designate) about addressing health care issues in the home to reduce the number of outbreaks in the home. The home must keep a written record of the consultations. The home must also establish a written surveillance protocol and reporting process for outbreaks. Other standards for the program relate to screening and training of staff, access to information about proper hygiene and the availability of hand sanitizers in the home.

Reference: section 60 of the Act and sections 24-27 of the Regulation

Assessment and Plans of Care

The Act requires a home to assess each resident and develop a written plan of care for each resident, subject to the consent of the resident. There are two types of assessments: initial and full. There are also two types of plan of care: initial and complete. Homes must conduct an initial assessment and develop an initial plan of care no later than two days after a resident moves into the home. The home must then conduct a full assessment no later than 14 days after the resident moves into the home. A complete plan of care must be in place no later than 21 days after the resident moves into the home. Requirements for the assessments and plans of care are in section 62 of the Act and sections 43-48 of the regulations.

The first or “initial assessment” relates to a resident’s immediate care needs. Section 43 of the regulation sets out what the home must consider during the initial assessment. By way of example, the assessment must include dietary needs, risk of harm to self and others and risk of wandering. The assessment informs the development of an initial plan of care, which must meet the requirements set out in Section 62 and section 43 of the regulation.

Section 44 of the Regulation sets out the content for the second or “full” assessment. This content includes functional capacity, need for care services and physical and mental health. The full assessment informs the development of a complete plan of care. The complete plan of care must meet the requirements in section 62 of the Act and section 47 of the regulation.

If an assessment indicates that the home cannot meet the care needs of a resident, the home must give the resident information about other alternatives to living in the home. If the assessment indicates the resident is eligible for long-term care, the home must give the resident information about applying to a long-term care home. If the resident requests, the home must contact a placement coordinator under the *Long-Term Care Homes Act, 2007* to give the resident information about alternatives to living in the home. The home must also document the action it takes for residents in this context. The home must submit the documentation to the RHRA on an annual basis.

There are a number of additional requirements relating to plans of care and assessments. The Act and regulations set out who may approve the plan, when the home must reassess a resident and other requirements. If a resident chooses, an external care provider (not a staff member of the home) may conduct the assessment. A resident must have the opportunity to participate in the development of his or her plan of care.

Reference: sections 62 & 63 of the Act and sections 8, 43 – 49 of the Regulation

Protection against Abuse and Neglect

Section 2 of the Act identifies five types of abuse: physical, sexual, emotional, verbal and financial abuse. Section 1 of the regulations defines each type of abuse.

Every licensee must protect residents from abuse by anyone and from neglect by the home or staff of the home. The Act requires that homes have a written policy that promotes zero tolerance of abuse and neglect of residents. Homes must ensure compliance with the policy. Section 67 of the Act and section 15 of the regulation set out the required contents of the policy. Among other things, the policy must provide for a program to prevent abuse and neglect, and set out consequences for those who abuse or neglect a resident.

Homes must immediately investigate abuse or neglect, including alleged or suspected abuse or neglect. The home must take appropriate action to respond to every case of abuse or neglect. The home must also notify the police if the home or staff of the home suspects that the abuse or neglect may amount to a criminal offence.

Reference: sections 2, 67 & 74 of the Act and sections 1 & 15 of the Regulation

Personal Assistance Services Devices (PASDs), Devices and Restraints

Section 50 of the Act sets out the definition of PASDs. Examples of PASDs include lap belts and wheelchair tabletops. Homes must have a written policy for the use of PASDs in the home. Section 69 of the Act sets out requirements for the use of PASDs. The requirements

include approval for use, resident consent, and consideration of alternatives. The Act states that homes must restrict the use of a PASD to assisting a resident with a routine activity of living.

The Act prohibits the use of restraints in the home, except where immediate action is necessary to prevent serious bodily harm to the resident or to others. The Act and regulation set out requirements for the use of restraints for this purpose. The regulations also prohibit the home from using certain devices, including vest or jacket restraints and roller bars on wheelchairs. In addition, the Act includes requirements relating to confinement of residents to a secure unit. Homes or external care providers must not confine residents to a secure unit unless it is in accordance with the Act.

Reference: sections 50, 68 – 71 of the Act and sections 51-54 of the Regulation

Mandatory Reporting and Whistle-Blowing Protection

Section 75 of the Act requires a person to make a report to the Registrar where the person suspects that a resident has suffered harm or is at risk of harm because of certain events. These events include abuse, neglect, improper care or treatment and unlawful conduct. A person must also make a report where they suspect misuse of a resident's money. Residents are not required to report, but may do so. It is an offence under the Act for certain people to fail to make a report.

Homes must post a sign in a visible place in the home that provides information about making reports to the Registrar. The Act requires the Registrar to send an inspector to the home if the report meets the threshold in section 75.

The Act has strong protections for those reporting or disclosing matters to the Registrar or an RHRA inspector. These protections are set out in section 115 and 116 of the Act. In general, a person must not retaliate against a person who makes a report or discloses information to the RHRA. Homes must not discourage reporting.

Reference: section 75, 115 & 116 of the Act and section 11, 58 & 60 of the Regulation

Staff and Volunteers

Qualifications and Training

Staff members who work in the home must have the proper qualifications and skills to work in the home. The regulations may set out required qualifications, but do not at this time.

Homes must train staff members in a number of areas before they start work in the home. These areas include the Residents' Bill of Rights, the policy to promote zero tolerance of abuse and neglect, and fire prevention and safety. Staff members must also receive ongoing training in these and other areas at least once a year. Direct care staff must receive training in additional areas within six months from starting work in the home and then on an annual basis. These areas include abuse prevention, mental health issues, and minimizing the use of PASDs.

Homes must train volunteers who interact with residents. Volunteers must receive training on applying the emergency plan and infection control program. Homes must also train volunteers on the policy to promote zero tolerance of abuse and neglect.

Reference: sections 65 & 66 of the Act and section 14 of the Regulation

Screening

Homes must complete police background checks for staff members and volunteers before they work in the home. Section 13 of the regulation sets out requirements and exceptions with respect to the checks as well as vulnerable sector screening (VSS).

Reference: section 64 of the Act and section 13 of the Regulation

Conclusion

The purpose of this guide is to provide an overview of the new *Retirement Homes Act, 2010*. It is a general summary. The guide does not replace a reading of the Act and the regulation themselves. If you have questions about how the Act applies to you or your home, you can contact the RHRA or seek legal advice. You can also visit the RHRA's website at www.rhra.ca. There are additional resources on the website to help you understand the Act. You can also contact the RHRA at the address and phone number below.

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