Future Directions for Legislation Governing Long-Term Care Homes
This is a request for public comment. Please note that unless requested and agreed otherwise by the Ministry, all materials or comments received from organizations will be considered public information and may be used and disclosed by the Ministry to assist the Ministry in formulating the proposed draft legislation. This may involve disclosing materials or comments, or summaries of them, to other interested parties during and after the request for public comment process.

An individual who provides materials or comments and who indicates an affiliation with an organization will be considered to have submitted those comments or materials on behalf of the organization so identified.

Materials or comments received from individuals who do not indicate affiliations with organizations will not be considered public information unless expressly stated otherwise by the individual. However, materials or comments provided by individuals may be used and disclosed by the Ministry to assist in formulating the proposed draft legislation. Personal information, such an individual’s name and contact details, will not be disclosed by the Ministry unless required by law. If you have any questions about the collection of this information, you can contact: The Freedom of Information and Privacy Coordinator, Ministry of Health and Long-Term Care at (416) 327-7040.
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November 3, 2004

Fellow Ontarians,

I have said it many times, but some things – especially those that we are very committed to – are worth repeating: the only standard in long-term care is a high one. Our seniors deserve nothing less.

Reforming long-term care in Ontario has been one of our government's top priorities since we were elected just over one year ago. In December I promised a “revolution” in long-term care, and I believe that is exactly what we are delivering.

Over the last year we have made important strides to improve the care and quality of life in LTC homes. We invested an additional $191 million dollars annually to hire 2000 new long-term care staff, including 600 new nurses.

This funding will also allow our long-term care homes to meet a consistently higher standard of care. We are reinstating the requirement in regulation – removed by the previous government – that a registered nurse be on site 24 hours a day, and we are creating a regulation to ensure residents receive at least two baths a week.

We established a toll-free Action Line (1-866-434-0144) for residents and their loved ones to register complaints, concerns and questions about services.

We have adopted a policy of unannounced visits and inspections, to better monitor the situation in these homes, and ensure that seniors are being treated with the respect and care they deserve.

We have provided funding to support homes to create Residents' Councils and Family Councils so that residents and their families have an effective voice in decisions affecting residents' care.

We increased the comfort allowance for residents for the first time in 20 years, and, at the same time, have frozen residents' accommodation costs for the first time since 1993.

And now I am pleased to present the next advance in reforming long-term care in Ontario. “Future Directions for Legislation Governing Long-Term Care Homes” is a discussion paper outlining the direction our government is proposing to take to improve long-term care homes.
This paper builds on the important work that was started by my Parliamentary Assistant, Monique Smith, over the past year. From January to March, Monique conducted a top-to-bottom review of long-term care homes.

The outcome is a far-reaching report, “Commitment to Care: A Plan for Long-Term Care in Ontario.” The report’s recommendations, in turn, have provided the foundation for the government’s action plan to reform long-term care and for the legislation that we propose to introduce early next year.

“Commitment to Care” recommended that the three separate pieces of legislation currently governing Ontario’s long-term care homes—the Nursing Homes Act, Homes for the Aged and Rest Homes Act and Charitable Institutions Act—should be brought together in a single piece of legislation to ensure uniform standards and accountability. Based on this recommendation, our Government is proposing to introduce a new consolidated “Long Term Care Homes Act” in 2005.

This proposed new Act will focus on five major areas, including: residents’ quality of life and care standards; residents’ rights and safeguards to combat abuse and neglect; compliance, inspection and enforcement programs in long-term care homes; systems for licensing home operators and approving beds; and planning and renewal of long-term care homes.

One of the proposed legislation’s top priorities would be strengthening measures to protect residents from harm. To that end, we are proposing strong whistleblower protection to ensure that long-term care workers who report cases of suspected abuse can do so without fear of reprisals.

We are asking Ontarians, in particular people who live and work in long-term care homes, for their input. Copies of this discussion paper will be available to people in long-term care homes, other public places and online. Over the next few months, we will also hold meetings with associations and members of the public. Once again, Monique Smith will lead the engagement process for this discussion paper and the review of all input received.

We have made tremendous progress together this year and I hope you will agree that the direction outlined in this position paper reflects our ultimate goal of ensuring that each and every long-term care home in this province is a true home.

Thank you for taking the time to read this paper and provide us with your feedback. We look forward to receiving your comments.

Yours truly,

George Smitherman
Minister
Introduction

On May 11, 2004, the Minister of Health and Long-Term Care released Commitment to Care, A Plan for Long-Term Care in Ontario, a review of the province’s long-term care (LTC) homes conducted by his Parliamentary Assistant, Monique Smith, M.P.P. for Nipissing.

LTC homes are residences that provide care and services for people who are no longer able to live independently or who require on-site nursing care, 24-hour supervision, or personal support.

Ontario’s LTC homes are now governed by three separate pieces of legislation:

- Nursing Homes Act (Nursing homes are also governed by provisions of the Health Facilities Special Orders Act.)
- Homes for the Aged and Rest Homes Act
- Charitable Institutions Act.

Commitment to Care recommended that the three Acts governing LTC homes be brought together in a single piece of legislation to ensure uniform standards and accountability. Based on this recommendation, the Government is proposing to introduce a new consolidated Long-Term Care Homes Act in 2005. (Retirement homes are not currently regulated by the provincial government and are not included in this legislative proposal.)

Based on current issues in long-term care, and the findings and recommendations in Commitment to Care, the Ministry has identified five major areas that will be addressed in the proposed new legislation:

1. Residents’ quality of life and care standards
2. Residents’ rights and safeguards to combat abuse and neglect
3. Compliance, inspection and enforcement programs in LTC homes
4. Systems for licensing homes and approving beds
5. Planning and renewal of LTC homes

Strengthening and consolidating the legislation for Ontario’s LTC homes is one way the Ministry is improving services to residents. Other recent and ongoing efforts include:

- a toll-free ACTION Line (1-866-434-0144) for complaints, concerns and questions about services
- revised standards of care
- unannounced initial visits and annual inspections
- a publicly accessible Web site to provide more information about LTC homes and help people make more informed decisions in selecting a home
• ensuring residents will receive round-the-clock nursing care, more baths and enhanced comfort allowances
• support for Residents’ Councils to represent and advocate for residents in LTC homes. The Ministry is also providing support for the establishment of Family Councils to complement the activities of Residents’ Councils.

The proposed new *Long-Term Care Homes Act* will reinforce the Ministry’s current initiatives and lay a firm foundation for future improvements to Ontario’s LTC home system.

The proposed legislation on LTC homes will be drafted within the context of the Government’s broader plan to implement Local Health Integration Networks (LHINs). LHINs are part of the Ministry’s plan to enhance coordination of the delivery of local healthcare services.
Overview

The purpose of this paper is to identify issues and concerns that will be addressed in the proposed new legislation. The Ministry wants to hear your suggestions about what should be included in the proposed *Long-Term Care Homes Act*.

Each section in this paper identifies issues and questions for your comments. We have provided a place for you to respond and provide any related comments you wish. If there is not enough space on the page for you to make your response, you may send additional paper.

You are NOT required to answer all of the questions in the following sections – only those that interest or concern you.

After reading this paper, you may have general comments about the current LTC home legislation and/or services that are not mentioned here. If so, we are interested in your recommendations. On the last page of this paper you will find an “Additional Comments” box in which you can write your general comments.

To assist the Ministry in analyzing responses to the issues raised, please indicate which of the following best describes your relationship to the LTC homes sector:

There will not be a public report on the comments received in response to this position paper.
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If you are responding by mail, please be sure to send this chart with your responses.

If you are responding by email, please indicate in the subject line to which category you belong. Also, please indicate the number of the question you are answering.

Your comments must be received by December 15, 2004, in order to be considered to the Minister of Health and Long-Term Care.
1. Residents’ Quality of Life and Standards of Care

Over the past 11 years, the level of health and personal care needs of residents in Ontario’s LTC homes have increased by nearly 20 per cent. Higher and more complex care needs must be matched with tighter accountability and strengthened quality assurance.

Residents, families, and residents’ groups want to see key program standards placed in legislation. The proposed legislation will contain clear and strengthened care and safety standards for the service provided by LTC home operators and their staff. For example, strengthened standards could include:

- administrator and staff qualifications
- training requirements
- a multidisciplinary approach to care
- continuity of care.

As it is for all Ontarians, quality of life is a central issue for people who seek admission to and live in LTC homes. We know that quality of life improves when residents, families and the broader community are involved in the LTC home’s operations. The Ministry is looking for ways of promoting community involvement through the proposed legislation.

People who are well informed feel more in control of their lives. The Ministry is proposing to strengthen its requirements to ensure that operators provide residents, their families, the public, and those seeking admission to LTC homes with clear, accessible information about the operations and policies of Ontario’s LTC homes.

Quality of Life

1. **What do you think should be the top priorities in the proposed legislation to address care and safety standards as well as residents’ quality of life?**

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Admission and Eligibility

The provincial placement co-ordination system was established in 1993 to create a consistent, province-wide process for admission to LTC homes. In that system it is the role of the Community Care Access Centre (CCAC) to:

- determine whether a person is eligible for admission
- place eligible applicants on the waiting lists of their chosen homes
- authorize people for admission when a bed becomes available in a chosen home.

The existing placement system was designed to respect the needs and preferences of applicants and their families while making the best use of available LTC home beds. Currently, people are prioritized according to the urgency of their need for admission to a LTC home. (In other words, people in crisis arising from their condition or circumstances are given the highest priority for admission to an LTC home.) Recently the Ministry introduced new regulations regarding the reunification of eligible spouses and partners in LTC homes.

2. Do you have any suggestions for changing the existing process for admission to LTC homes? If so, what are they and how would these changes improve the existing system?

Residents’ Councils

Residents’ Councils:

- advise residents of their rights in the home
- review the operation of the home
- mediate and resolve disputes between residents and the home
- report concerns and make recommendations for improvements in the home.

Operators are required under the three Acts to facilitate the creation of a Residents’ Council, to assist residents who want to establish a Residents’ Council, and to co-operate with Residents’ Councils in carrying out their activities.
3. Do you think that the existing requirements effectively promote the establishment of Residents’ Councils?

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4. How could Residents’ Councils become a more effective voice for residents?

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Family Councils

The proposed legislation could include provisions that will require the establishment of independent Family Councils. Their mandate would be complementary to that of the Residents’ Councils. Family members, partners or friends of current or past residents and members of the community would be able to establish a Family Council that would be separate from the home’s Residents’ Council.

5. What do you think the critical functions of Family Councils could be?

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6. **How could the proposed legislation support and encourage the establishment of Family Councils?** (e.g., requiring the home to tell families about the Family Council Project)

Posting Information for Residents, Families and the Public

The Ministry wants to make sure residents and their families can easily access information about the LTC homes in their community. Currently the legislation requires an operator to post the following in the home, in public view:

- the home’s accountability agreement with the Ministry (known as the “service agreement”)
- a copy of the most recent inspection report issued by the Ministry
- procedures for making a complaint.

7. **What other information should the operator post?** (e.g., about the home’s abuse prevention programs, the home’s policy on the use of restraints)
8. **What methods should the operator use to make information available to residents, families and the community?** *(e.g., provide information to each resident as part of a yearly report-card, post information in an accessible place such as the main bulletin board in the home, especially for those who do not have access to the internet)*

The Ministry also plays a role in ensuring that residents, families and the public are well informed about LTC homes in their communities. The Ministry is in the process of launching a Web site through which the public will be able to access information about LTC homes.

9. **What information would you like to see the Ministry make available to the public regarding LTC homes?**

10. **What methods should the Ministry use to make the information available?**
2. Residents’ Rights and Safeguards

Many LTC homes ensure that residents’ rights are respected and that residents are safe from harm. The public must be confident that all residents in all LTC homes are protected from any and all forms of abuse and neglect and their rights are respected.

Residents must be protected from financial, sexual, mental, emotional and physical abuse and neglect. To achieve this goal, the Ministry is proposing changes in the new legislation that:

- strengthen residents’ rights
- make residents’ rights and safeguards more enforceable
- place a requirement on all staff and the general public to report abuse when they see it or suspect it
- protect staff and families who report abuse and neglect ("whistleblower" protections).

Residents in LTC homes must be protected from improper use of restraints. Staff in LTC homes sometimes restrain residents for safety reasons using physical devices, medication, or by limiting where residents can go. There are concerns about how these physical, chemical and environmental restraints are used in LTC homes. The proposed legislation could address these concerns through:

- clearly defining the different types of restraints
- stating the conditions that must be met for each type of restraint before it can be used
- setting clear rules governing their use
- requiring regular monitoring of the health and well-being of residents who are restrained
- establishing requirements for authorizing and documenting the use of restraints.

Restraints

The Ministry is proposing to develop clear standards for the use of restraints and ensure that restraints are used only when necessary for safety reasons.

11. What should the Ministry consider when developing legislation concerning the use of restraints?
Bill of Rights

Residents’ rights are established in a Residents’ Bill of Rights under the existing long-term care home legislation.

12. What changes would you suggest to strengthen the existing Residents’ Bill of Rights?

Duty to Report

One way of safeguarding residents is to require people to report abuse and neglect when they see or suspect it.

The Nursing Homes Act contains a mandatory reporting requirement. It requires all persons other than residents (e.g., staff and family members) who have reasonable grounds to suspect that a resident has suffered, or may suffer harm as a result of neglect or incompetent care, to report their suspicions.

The Ministry is proposing to strengthen this duty to report abuse and other unlawful acts in LTC homes. (e.g., fraudulent bookkeeping, destruction of evidence, financial mismanagement)

13. Should all staff and the general public be required to report abuse and other unlawful activities in LTC homes?
14. Should penalties be imposed on staff and the general public who fail in their duty to report abuse and other unlawful activities?


15. Should the reporting requirement be more strict for professionals and other members of the staff in an LTC home than for the general public?


Whistleblower Protection

The Ministry is proposing to ensure that staff, residents, family and any other persons who in good faith report abuse and unlawful activity do not suffer reprisals as a consequence.

The Ministry is proposing to include a provision in the LTC legislation that no LTC home operator shall dismiss, discipline, suspend, demote, harass, intimidate, coerce, or otherwise disadvantage or impose a penalty or threaten to do any of these things against any person who has reported abuse or neglect (or suspected abuse or neglect).

The Ministry recognizes that it is not enough to simply strengthen whistleblower protections without ensuring that there are procedures in place to encourage people to report and protect them when they do so. The Ministry is therefore proposing to include the following requirements to make sure that reporting occurs:

- Protect residents, families, staff and any other person against specific reprisals for reporting, including harassment and isolation
- Protect employees against poor job references and the elimination of the whistleblower's job
- Encourage residents, families, staff, and others to use the Ministry's confidential ACTION Line (1-866-434-0144) to report abuse
- Impose sanctions if a home operator retaliates
- Give employees a right of appeal to a labour relations tribunal if a home operator retaliates.

16. Would people be more likely to report their concerns about abuse if these approaches were used?

17. What other methods could be used to encourage or enable people to report abuse, neglect or harm done to residents through unlawful actions or incompetent care?

3. Compliance, Inspection and Enforcement Programs

The Ministry is proposing to develop stronger inspection and enforcement procedures to make operators fully accountable for care standards and for the proper use of Ministry funds.

Currently the Ministry has sanctions (such as closing a home) in the three Acts to deal with serious infractions. However, these sanctions are not always suitable for problems that could be addressed in the early stages.

The Ministry is proposing to add new sanctions to address the full range of problems – from minor to more serious. These sanctions would also improve the accountability of operators to the public and government.
The Ministry is also proposing to include a requirement on the directors and officers of organizations that operate homes to take reasonable care to ensure that the home operates in accordance with the law.

**Inspection and Enforcement**

In addition to current surprise inspections, the Ministry is redesigning its inspection and enforcement system.

18. **What methods should the Ministry use to inform all affected parties about the outcome of a complaint investigation conducted by the Ministry?**

19. **Should the Residents’ and Family Councils be formally advised of the outcome of complaint investigations conducted by the Ministry? And if so, at what point in the investigation should they be advised?**

20. **What process should be put in place for operators who disagree with the results of an inspection or the imposition of a sanction by the Ministry?**
Existing Sanctions

Current legislation permits the Ministry to impose certain sanctions including:

• orders to stop an activity (e.g., ordering the home to cease charging unallowable fees to residents’ trust accounts or to stop using a prohibited restraint on a resident)
• suspension of admissions of residents
• revocation and suspension of a licence
• reduction in the operating subsidy that the government pays to the operator
• takeover and/or closure of a home.

21. How should these sanctions be changed or strengthened?

22. How could these sanctions be used more effectively to make sure that operators correct problems that have been identified in their homes?

New Sanctions

The Ministry is considering the expansion of existing sanctions and the addition of new sanctions where appropriate including, but not limited to:

• Orders to undertake an activity (e.g., hire additional staff or conduct training programs for staff)
• Administrative penalties
• Imposing additional terms and conditions on a licence or approval to operate a home.
23. Do you think these proposed sanctions will be effective?

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24. When should these proposed sanctions be used?

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25. Are there any other sanctions that the Ministry should consider?

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26. Do you think that it would be appropriate in some circumstances to permit the Ministry to impose sanctions on persons other than the operator? (e.g., an operator’s officers and directors)

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27. Do you think that it is appropriate to have a requirement on the directors and officers of organizations that operate homes to take reasonable care to ensure that the home operates in accordance with the law?

4. Systems for Licensing Homes and Approving Beds

The Ministry funds and sets standards for all LTC homes as part of a single system-under three separate Acts. One challenge facing the Ministry in its proposals to bring the three Acts together is the area of governance.

- operators are licensed under the Nursing Homes Act
- charitable institutions are approved by the Ministry to operate charitable homes for the aged under the Charitable Institutions Act
- municipalities are required to operate a home under the Homes for the Aged and Rest Homes Act. (District homes in the north are not required, but are usually established by the passage of a by-law by the majority of municipalities in the district).

Different governance models evolved in the homes for historical reasons:

- the Homes for the Aged and Rest Homes Act and the Charitable Institutions Act were designed to govern non-profit service systems
- the Nursing Homes Act was designed to govern a primarily for-profit sector.

Under the Nursing Homes Act, the Ministry issues licences to nursing home operators with a term of one year. Operators must renew their licence every year. Approvals under the Charitable Institutions Act continue indefinitely.

Municipalities have long played a critical role in making sure LTC beds are available across the province. The government proposes to retain the existing requirement for municipalities to operate a home.
Requirements on Municipalities

28. Do you agree that there should continue to be a requirement for municipalities to operate a LTC home?

29. If municipalities were no longer required to operate a home, how would the Ministry make sure that LTC home beds are available province-wide?

Licensing and Approvals

Under the Nursing Homes Act, the Ministry issues licences to nursing home operators with a term of one year. Operators must renew their licence every year. Approvals under the Charitable Institutions Act continue indefinitely.

The Ministry is proposing to develop a more flexible system that links licensing or approvals to factors such as local bed needs, capital planning and enforcement issues. The Ministry is therefore proposing to place fixed terms (time limits) on licences or approvals to address these factors.
30. What factors should the Ministry consider when designing a new licencing and bed-approval system?

31. What factors should the Ministry consider when setting terms (time limits) on the licence or approval of a particular home? (e.g., the physical structure of the home)

32. What criteria should the Ministry use when deciding whether to renew a licence or approval?
33. **What criteria should the Ministry use when deciding whether to revoke a licence or approval?**

34. **Should the public have an opportunity to comment on the application for a licence or approval? What methods should be used to allow the public to make such comments?**

Some nursing home operators have been permitted to transfer their bed licences to another operator in another location.

35. **In the future, should an operator be permitted to transfer their licence to another operator in another location? If so, what criteria should the Ministry use when deciding whether to approve the transfer?**
5. Planning and Renewal of LTC Homes

Ontario has made a significant investment to make LTC homes available to a growing population who require long-term care.

The existing legislation does not adequately promote the maintenance and renewal of the homes’ physical structures. The Ministry is proposing in the new legislation to protect its investment in the homes by making capital renewal requirements part of its licensing and enforcement activities.

Home Renewal

36. How can Ontario ensure that operators undertake renovation, renewal and rebuilding of their homes?

37. Should the Ministry require operators to reserve a specified amount of their government funding for ongoing maintenance and repair of the physical structure of their homes?
Additional Comments

If you have general comments or suggestions about Ontario’s long-term care homes – whether or not your issues have been raised in this paper – please use the box below to tell us about them.

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Instructions for Sending Your Response

To submit your response to this position paper by mail, please send your comments to this address:

LTC Homes Legislation Project
Long-Term Care Facilities Branch
Community Health Division MOHLTC
56 Wellesley Street West
Toronto, Ontario M7A 2J9

To submit your comments and responses to this paper by email, our address is: commentsltc@moh.gov.on.ca

To submit comments online visit the Ministry’s Web site at: www.health.gov.on.ca