



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

BRIEF SUBMITTED BY THE QUÉBEC OMBUDSMAN

TO THE MINISTER FOR SOCIAL SERVICES

**CONCERNING THE DRAFT REGULATION RESPECTING THE CONDITIONS
FOR OBTAINING A CERTIFICATE OF COMPLIANCE
AND THE OPERATING STANDARDS FOR A PRIVATE SENIORS' RESIDENCE**

Québec, July 13, 2012

Table of Contents

Introduction	3
1. The exclusion of certain residences and exemptions for limited-capacity residences....	3
2. Impact on the clientele of the categorization of private seniors' residences into two types (those for independent and for semi-independent elderly persons).....	4
3. Assessment	5
4. The safety of residents	6
5. The quality of services	7
Conclusion	10
List of recommendations	11

Introduction

As part of consultations on Bill 16: the *Act to amend various legislative provisions concerning health and social services in order, in particular, to tighten up the certification process for private seniors' residences*, the Québec Ombudsman on September 6, 2011, emphasized the importance to the Committee on Health and Social Services of setting rigorous certification criteria and inspection practices for private seniors' residences. Nine recommendations were made aimed at ensuring consideration for the rights of seniors living there, notably in the area of safety, the quality of services, respect for residents and their quality of life.

From this perspective, the Québec Ombudsman analyzed the draft regulation to make sure that the proposed criteria and standards will adequately respond to the problems brought to light by users of the health and social services network.

The 90 sections of the draft regulation (hereinafter the Regulation), as opposed to the 26 sections of the prior regulatory text on the subject, seem to bear witness to a desire to provide better protection for people living in private seniors' residences. However, the exclusion of residences providing only one service, as well as the exemption granted to others with a limited accommodation capacity from the application of certain sections of the Regulation, is of great concern. I am particularly concerned by the categorization of private seniors' residences under two types (those for independent elderly persons and others for semi-independent elderly persons) and the consideration given to the changing needs of the residents. I am also worried about the safety of residents and the quality of services.

1. The exclusion of certain residences and exemptions for limited-capacity residences

I reiterate my concern about excluding private seniors' residences who provide only one service from the certification process (s. 2 of the Regulation), as I expressed in my brief on Bill 16 (recommendations R1 and R2).

Moreover the proposed definitions in section 1 of the Regulation regarding what will be considered a "service" to meet the definition of a private seniors' residence still leaves a wide margin for interpretation. Does it mean that meal services provided during the week but not on weekends would not meet the definition of "meal services"? Does organizing leisure activities under the responsibility of a residents' committee that actively involves the person in charge of the residence meet the definition of "recreation services"? I fear that a too-narrow interpretation would result in excluding a large number of residences.

The result would lead, in particular, to greater risk of abuse and disregard for the rights of residents, who would be deprived of an impartial non-judicial recourse because those residences would not come under the complaints examination procedure provided in the *Act respecting health services and social services*.

Further, the definitions of “personal assistance services” and “nursing care services” fail to specify the level of services that a residence is authorized to dispense. Would a private residence be likely to lodge seniors with needs as great as those in a CHSLD-type residential and long-term care centre, without holding the permits associated with these residences for this type of clientele? The Québec Ombudsman’s investigations of private residences have brought to light a clientele with ever increasing care needs.

The Québec Ombudsman has previously denounced the exclusion introduced by the new definition of seniors’ residences in comments on Bill 16. The exemption from the application of certain sections of the Regulation to residences with a limited accommodation capacity appears to make a new breach in the protection that the certification of seniors’ residences affords to a vulnerable part of our population.

Exemptions for residences lodging fewer than six people (s. 5) are of great concern to me. These are not required to provide a call-for-help system. Complaints to the Québec Ombudsman reveal that this type of resource is nonetheless accepting people who run the risk of falling down or who present cognitive impairment associated with wandering. How can the safety of residents be assured in the event of a night-time incident where no call-for-help system is in place to alert the staff member assigned to supervision, given that this person is not even required to stay awake?

Finally, how relevant is to not require the same minimal procedures from these small residences as from the others in the event of unexplained absence, danger for life and limb, death or oppressive heat (s. 17 and Schedule II), or similarly to keep a register of incidents and accidents (s. 57) and draw up of a code of conduct (s. 37)? Why should individuals who choose this type of residence, often due to lack of other resources in their area, not be assured the same degree of safety as elsewhere?

ACCORDINGLY, THE QUÉBEC OMBUDSMAN RECOMMENDS:

- R1: *THAT personal assistance services be defined more precisely so as to clearly identify the clientele covered, in particular by setting out bounds for the services made available by private seniors’ residences;*
- R2: *THAT the safety and supervision measures required from operators of limited-capacity private residences be adapted above all to take into account the characteristics of their residents and spatial organization, not merely their number.*

2. Impact on the clientele of the categorization of private seniors’ residences into two types (those for independent and for semi-independent elderly persons)

The Regulation proposes establishing two categories of residences, according to whether services are intended for independent or for semi-independent seniors. This categorization is founded on a distinction that, in the view of the Québec Ombudsman, fails to take into

account the evolving nature of the state of health and needs of many elderly people. The Regulation clearly sets out that a residence belonging to the category of those for independent elderly persons is not authorized to provide personal assistance services. Does this mean that someone living in this category of seniors' residences would have to move out when needing help to remember meal times? Or to put on socks in the morning?

The state of health and needs of the elderly change at a distinct pace and differently for each individual. The choice to go live in a private seniors' residence often arises in parallel to the aging process, which may signal the start, depending on the person, of a decline and the more or less rapid progression of loss of independence.

Some people move into a private seniors' residence to feel more secure, both for safety and psychological reasons. The choice is not trivial but rather linked to the living environment and kind of services provided by the residence selected. For many, this new living space is contemplated for the longer term, as far as their state of health allows. For others, it's a transitional stage while awaiting a CHSLD place, meantime relying on local community service centre (CLSC) support for additional services to complement the basic offering of their new residence.

This situation allows us to see why private seniors' residences are not merely in the business of providing rental lodging. They also represent a complementary resource to the health and social services network. This aspect must be central in our view to government decision-making about certification.

The reports and complaints handled by the Québec Ombudsman often deal with strings of hospitalization stays and changes of address for a good number of elderly people in a very short span of time. The move into a private seniors' residence forms part of those changes. Overall, these many moves directly impact on an elderly person's health and ability to adapt. I fear that the categorization of private seniors' residences will multiply the number of moves for this vulnerable segment of our population.

ACCORDINGLY, THE QUÉBEC OMBUDSMAN RECOMMENDS:

R3: THAT the Regulation specify the meaning of "independent elderly person" and "semi-independent elderly person".

3. Assessment

Should a significant change be seen in a resident's daily functioning, the use of standardized autonomy measurement tools (s. 62) is very relevant. This assessment is critical in determining whether the residence is capable or not of providing the new services required by the senior's condition. This assessment must be conducted by a competent person so that results are reliable.

ACCORDINGLY, THE QUÉBEC OMBUDSMAN RECOMMENDS:

R4: THAT the Regulation set forth the training and expertise required of staff members at a senior's residence who may be called upon to assess the functional autonomy of residents or prospective residents.

4. The safety of residents

Fire safety

The Québec Ombudsman's brief on Bill 16 denounces situations in which the reduced mobility of seniors can be a problem in ensuring safe evacuation from a residence in the event of a fire. This remains an issue of great concern.

Prior to opening a residence, the operator must establish and update a fire safety plan in accordance with the guide recognized by the Ministère de la Sécurité publique. Beyond this theoretical exercise, the Québec Ombudsman continues to be concerned about the time span allowed to authorities for conducting evacuation drills. Our investigations have noted that seniors whose mobility is reduced often make the choice to move into a residence precisely for the advantage of greater safety.

Ever more large-scale residential projects with places for hundreds of seniors are being built, and current records show that the average age of the clientele is 80 and older. Aside from the safety plan prepared by the operator, how can we be sure that all these people will actually be safely evacuated? My brief on Bill 16 brought to light real situations where many people were unable to leave a residence in the event of fire. What in the new Regulation adequately guarantees safety?

ACCORDINGLY, THE QUÉBEC OMBUDSMAN RECOMMENDS:

R5: THAT the operator of a residence be required to submit to the health and social services agency confirmation from the municipal fire safety service that it approved the fire safety plan and its updates.

Supervision

The introduction of a ratio of staff present in a residence to respond quickly in an emergency is one of the main aspects of the desired reform. However, the minimum threshold set according to the category of seniors' residences is in my view clearly insufficient to ensure the vigilance that is required (s. 29 and s. 33).

For instance, I worry about the ratio of two staff members present in a seniors' residence comprising between 100 and 199 rooms or apartments where services are intended for semi-independent people. According to data made public by the Canadian Institute for Health Information, it is estimated that from 35 to 40% of people aged 65 and over live together as

couples in Québec. This means that there are easily 270 to 280 seniors in a residence of 199 rooms or apartments. The regulatory ratio is thus one staff member to supervise 140 semi-independent elderly people who might need prompt assistance. The supervisory personnel threshold should be based on the number of residents and their specific characteristics, rather than on the number of rooms or apartments.

Section 30 of the Regulation covers another noteworthy aspect in that it leaves to the operator of a private seniors' residence for semi-independent elderly persons the choice of measures to prevent residents prone to wandering from leaving the residence or its grounds. Section 13 of the current Regulation prescribes the installation of a safety device which alerts staff members. The scope of the corresponding section in the new Regulation is less restrictive. Which measures will be deemed adequate from now on?

I fear that these provisions will not increase residents' safety and that safety measures will be increased only after mishaps occur. Too many of our investigations have revealed delayed reaction whereas there was in fact a high probability of incidents or accidents.

ACCORDINGLY, THE QUÉBEC OMBUDSMAN RECOMMENDS:

- R6: *Adjusting the number of staff members who must be present at all times in a private seniors' residence, not only according to the number of residents, but also according to their characteristics so as to take risky behaviour into account (wandering, falls, etc.);*
- R7: *Using the wording of section 13 of the current Regulation respecting the conditions for obtaining a certificate of compliance for a private seniors' residence (R.R.Q., c. S-4.2, R. 5), instead of section 30 of the draft Regulation, so as to require the installation of a safety device to alert staff members in cases where an operator has residents who should be subject to monitoring because of a wandering risk.*

5. The quality of services

Personnel

I am in favour of the requirements in connection with the training and skills demanded of orderlies who interact with residents. It also seems appropriate to have these requirements adapted according to the category of private seniors' residences (s. 20 to s. 23). However, considering the exemptions (linked to experience) and the timeframe for meeting the requirements (November 2015), how can we be assured that all staff members are capable of intervening adequately and immediately with residents? As well, how can maintaining those skills be guaranteed?

The Regulation provides that the operator must keep a file showing staff members' skills and proof of having successfully completed the required training (s. 67). Apart from certification of completed training, there is no specific mention as to the manner in which the operator is to establish mastery of those skills. Would requiring a formal process that is structured and ongoing from an operator not be more suitable for assessing staff members' competence? Could the health and social services centre (CSSS) not take part in the assessment of staff members' skills, through the agreement prescribed in section 40, for instance?

The Québec Ombudsman's investigations have revealed that the experience of an orderly working in a private residence with elderly persons is not an iron-clad guarantee of the acquisition of skills covered by the Regulation. Some of the conclusions point to a lack of know-how or inter-personal skills on the part of orderlies, who nonetheless have sufficient experience to qualify for an exemption from the training required under the Regulation.

The Regulation also prescribes that the operator of a private residence for semi-independent seniors must be able to provide the services of a nurse or nursing assistant who is a member in good standing of his or her professional order. How realistic is it to expect a lone nurse in a private residence with 200 rooms or apartments for semi-independent elderly people to fully carry out his or her professional duties?

Based on the results of our investigations, I consider this provision to be insufficient. Major deficiencies in professional training and clinical supervision were observed in private seniors' residences.

ACCORDINGLY, THE QUÉBEC OMBUDSMAN RECOMMENDS:

- R8: *THAT the Regulation specify the measures an operator of a private seniors' residence must put into place to ensure mastery of the required skills by all staff members;*
- R9: *THAT the Regulation set forth a minimum percentage of orderlies who must have completed the training requirements each year before the deadline of November 1, 2015. For example, it could provide that at least a third of employees must have completed their training by November 1, 2013, and two-thirds by November 1, 2014;*
- R10: *Adjusting the number of nurses or nursing assistants in good standing of their professional order that the operator of a private residence for semi-independent seniors be required under section 35 of the Regulation to have on duty, according to the number and characteristics of the residents.*

Agreement with the local body

Under section 40 of the Regulation, the delivery of health services and social services by the local authority in the territory where the private seniors' residence is located must be set out in an agreement with the operator. However, there are no bounds governing the content of this agreement. What are the goals pursued? Is the end merely the dispensation of health services and social services? Or more broadly, is there a search for a securing and exchange mechanism in order to adapt and improve the delivery of services to residents? I also wonder if a certain degree of uniformity in the agreement's content would be beneficial in avoiding problems of unfairness or disparity. I consider that this agreement should include at the very least a means of information-sharing that would allow the operator and local body to work in partnership on prevention and risk management.

ACCORDINGLY, THE QUÉBEC OMBUDSMAN RECOMMENDS:

R11: THAT section 40 of the Regulation specify a minimal content for the agreement that must be reached between the operator and local body on the terms of dispensing health services and social services to residents.

Prevention and risk management

I am in favour of the obligation incumbent on the operator to take the necessary steps to correct or reduce the frequency of situations creating a risk, to report and disclose incidents and accidents as well as the keeping of a register by a designated person (s. 57 to s. 60). A question nonetheless persists regarding the absence of support and follow-up by the health and social services agency responsible, to ensure the safe management of risks for residents.

ACCORDINGLY, THE QUÉBEC OMBUDSMAN RECOMMENDS:

R12: THAT the operator be required to submit the register kept under section 57 of the Regulation to the health and social services agency on an annual basis.

Conclusion

Private sector input in meeting the needs of seniors is ever more pronounced and essential. However, the issues of safety, quality of life and respect for elderly people remain fundamental, regardless of the public or private delivery of the services offered. The tightening of certification criteria is intimately linked with inspection practices applied attentively, consistently and rigorously. Although the Regulation appears to herald a tightening of certification criteria and operating standards, residents will see the benefits only through their implementation. Will agencies exercise their responsibilities in this area, whereas they are struggling to do so with the current Regulation?

I question the absence in the Regulation of follow-up and control mechanisms, albeit minimal, that would allow agencies to exercise vigilance from the time of initial certification and its renewal. While the Regulation does demand that the operator keep the documents, proof and certificates showing standards are met, there is no requirement to submit them to the agencies concerned, as is the case for the fire safety plan and the register of incidents and accidents. In such conditions, how will agencies become aware of them before an unfortunate event occurs because a residence failed to meet the criteria or standards? Which indicators will prod authorities to act before the irreparable happens? This aspect should be addressed by the Regulation.

List of recommendations

THE QUÉBEC OMBUDSMAN RECOMMENDS:

- R1: *THAT personal assistance services be defined more precisely so as to clearly identify the clientele covered, in particular by setting out bounds for the services made available by private seniors' residences;*
- R2: *THAT the safety and supervision measures required from operators of limited-capacity private residences be adapted above all to take into account the characteristics of their residents and spatial organization, not merely their number;*
- R3: *THAT the Regulation specify the meaning of "independent elderly person" and "semi-independent elderly person";*
- R4: *THAT the Regulation set forth the training and expertise required of staff members at a senior's residence who may be called upon to assess the functional autonomy of residents or prospective residents;*
- R5: *THAT the operator of a residence be required to submit to the health and social services agency confirmation from the municipal fire safety service that it approved the fire safety plan and its updates;*
- R6: *Adjusting the number of staff members who must be present at all times in a private seniors' residence, not only according to the number of residents, but also according to their characteristics so as to take risky behaviour into account (wandering, falls, etc.);*
- R7: *Using the wording of section 13 of the current Regulation respecting the conditions for obtaining a certificate of compliance for a private seniors' residence (R.R.Q., c. S-4.2, R. 5), instead of section 30 of the draft Regulation, so as to require the installation of a safety device to alert staff members in cases where an operator has residents who should be subject to monitoring because of a wandering risk;*

List of recommendations (cont'd)

- R8: *THAT the Regulation specify the measures an operator of a private seniors' residences must put into place to ensure mastery of the required skills by all staff members;*
- R9: *THAT the Regulation set forth a minimum percentage of orderlies who must have completed the training requirements each year before the deadline of November 1, 2015. For example, it could provide that at least a third of employees must have completed their training by November 1, 2013, and two-thirds by November 1, 2014;*
- R10: *Adjusting the number of nurses or nursing assistants in good standing of their professional order that the operator of a private residence for semi-independent seniors be required under section 35 of the Regulation to have on duty, according to the number and characteristics of the residents;*
- R11: *THAT section 40 of the Regulation specify a minimal content for the agreement that must be reached between the operator and local body on the terms of dispensing health services and social services to residents;*
- R12: *THAT the operator be required to submit the register kept under section 57 of the Regulation to the health and social services agency on an annual basis.*