

Control of service quality

Quality control is vital to the continued improvement of services to users. In light of the obligations of the Ministère de la Santé et des Services sociaux, in February and March 2007 the Québec Ombudsman analyzed the degree to which the strengthening measures of the complaints examination procedure have been implemented. It also took account of the central role of the watchdog committee.

THE DEPARTMENT'S OBLIGATIONS

An Act respecting health services and social services imposes monitoring and control obligations on the Department regarding the quality of care and services dispensed in the network. These imperatives are at the foundation of its mission, which is to “*maintain, improve and restore the health and welfare of Québec residents by making available to them an entire range of integrated, high-quality health and social services [...]*”¹

To achieve this, the Department must in particular ensure that every institution seek certification of the health services and social services that it dispenses from recognized accreditation organizations every three years. It can request or authorize an inspection. Accordingly, the person mandated for this purpose may at any reasonable time enter any premises or any facility maintained by an institution to check whether activities requiring permits are carried on there.

In the absence of the required permits, the Minister may—after consulting the body concerned and after notifying the person who maintains such a facility of his decision, with the reasons for it—proceed to have persons accommodated there evacuated and transferred. He may also delegate to agencies the power to inspect, evacuate and transfer users to another resource. He has wide-ranging powers regarding the provisional administration of institutions, more commonly known as *trusteeship*.

The Minister may also take administrative measures. He can, for example, disqualify members of the board of directors or designate a controller to supervise the use of public funds by institutions and agencies. Lastly, the Act stipulates that the government can appoint a person to investigate any matter related to the quality of health services and social services, or to the administration, organization and operation of an institution or agency.

1/ Ministère de la Santé et des Services sociaux, *Rapport annuel de gestion 2005-2006*, p. 19.

COMPLAINT EXAMINATION PROCEDURE

The National Assembly has made respecting users' rights, and the quality of health services and social services a priority. This is why *An Act respecting health services and social services* was amended in 2005 by the adoption of Bill 83.² Various measures have been adopted for this purpose, including the setting up of watchdog committees to take primary responsibility for service quality on behalf of an institution's board of directors. This committee must ensure that complaints are given proper follow-up. The amendments to the Act also make the complaints and service quality commissioner responsible to the board of directors and make his or her function within the organization exclusive. Lastly, the responsibilities of the Health and Social Services Ombudsman are now exercised by the Québec Ombudsman, who reports to the National Assembly.

Some of these measures came into effect on April 1, 2006. As a result, 2006-2007 has been a year of transition during which institutions in the health and social services network had to implement the measures required to comply with the Act.

Although the primary aim of the complaint examination procedure is respect of users' rights, it is also a means of improving service quality. The strengthening of the status of local and regional complaints and service quality commissioners, as well as the full independence and impartiality arising out of the devolving of the Health and Social Services Ombudsman's powers to the Québec Ombudsman, demonstrate the government's intention to create conditions conducive to the success of the new procedure.

THE SURVEY

Certain findings arising out of its examination of user complaints, in the second stage of recourse, together with its work in the field, led the Québec Ombudsman to assess the status of the implementation of the new complaint examination procedure. It conducted a survey of the chairs of boards of directors of institutions, and of managers of complaints assistance and support centres. This survey made it possible to better document the actual status of the implementation. It was important for the Québec Ombudsman, whose primary mandate is to oversee the respect of users' rights, to ensure that the first level was working adequately, because its own effectiveness depends on this.

² *An Act to amend the Act respecting health services and social services and other legislative provisions*, 2005, chapter 32.

The survey³ was conducted in February and March 2007. Out of 296 invitations to participate, 228 replies were obtained, giving a participation rate of 76%. The questions concerned:

- the appointment of the complaints and service quality commissioner;
- conditions of practice;
- the breakdown of commissioners' working time according to their main duties;
- the promotion of the complaint examination procedure;
- publication of the commissioner's identity and the second stage of recourse;
- the appointment of watchdog committee members.

Managers of complaints assistance and support centres were asked questions on substantially the same subjects. However, the respondents made a number of comments of a qualitative nature. The comments were varied and although they cannot be generalized, they can apply to several regions.

HIGHLIGHTS

- Chairs of the boards of institutions

In summary, the survey of chairs of the boards of institutions reported delays in the hiring of complaints and service quality commissioners in 45% of institutions. The vast majority of commissioners hired are new in the position and have part-time status. They devoted an average of between 11 and 12 hours per week to this activity, and 41% of them are on contract. Half of the commissioners have responsibility for three or more facilities, the average being five or six facilities.

The procedure is promoted mainly through leaflets, posters and the Web sites of institutions. In addition, the great majority of institutions publish the identity and functions of commissioners and examining physicians. Information on the second stage of recourse is included in the acknowledgment of receipt of a complaint and in an information leaflet for the public. As of April 1, 2007, 91% of members of watchdog committees were to have been appointed.

^{3/} This survey was carried out by the firm of SOM.

- Managers of complaints assistance and support centres

Seventy-five percent of respondents from complaints assistance and support centres reported delays in the hiring of local commissioners. According to 62.5% of them, these delays and the transitional context cause delays in the processing of complaints. Non-replacement of commissioners during absences and leave also seems to have contributed to lengthening the time taken to process complaints. Moreover, 81% of respondents stated that the part-time and on-contract status of commissioners, together with the fact that they are assigned to several facilities, create difficulties with regard to respect of rights, service quality and the availability of commissioners to carry out their duties other than dealing with complaints.

The lack of availability also has an effect on the ability of those involved in the procedure to consult with one other at the regional level. For respondents, the double duty—of a commissioner employed both by an institution and a health and social services agency—did not seem to create difficulties except with regard to the commissioner's accessibility and availability, which can be compromised.

To the question of whether the exclusiveness of their duties had a positive impact, 31.25% replied yes, 25% replied no and 43.75% replied that it had little impact. In this regard, comments by respondents indicate that the presence of the local commissioner in the institutions and his or her proximity to the institution's personnel and management can compromise his objectivity and impartiality, thereby undermining the procedure's credibility. In their view, the procedure's credibility is diminished by the three following factors:

- difficulties in gaining access to commissioners;
- claims by institutions that their inability to meet needs is the result of lack of available resources;
- the perception that the operational proximity to the institution's management and personnel compromises commissioners' independence.

Managers of complaints assistance and support centres also indicated that consultation, collaboration and communications with commissioners diminished over the course of 2006-2007. Despite the variety of information tools used to publicize the procedure, its promotion appears to be insufficient. Information on second-stage recourse, that is, recourse to the Québec Ombudsman, has not been systematically communicated to users. Lastly, in all cases, respondents stated that activities to promote the procedure were inadequate in their region.

BOTH GROUPS HAVE A SIMILAR READING OF THE SITUATION

Chairs of boards of directors, and managers of complaints assistance and support centres have a similar reading of the degree to which the procedure has been implemented and of its repercussions on respect of users' rights. Delays in the hiring of commissioners and the part-time availability of most of them caused hold-ups in the processing of complaints in 2006-2007. This limited availability of commissioners and the high number of facilities for which they are responsible suggest that they may not have time to accomplish all the duties with which they are entrusted. Although most commissioners are permanent employees, their part-time status and their high workload may increase the turnover rate of these employees. The majority of respondents in both groups felt that the exclusiveness of duties fostered objectivity and impartiality.

Although they indicate that reinforcement measures are being put in place, the survey results remaining worrying. Delays in the hiring of commissioners, and the appointment of watchdog committee members should be made up during the course of the year. On the other hand, the average time that commissioners have and the high number of institutions for which they are each responsible will have an impact on their accessibility, their capacity to accomplish all the functions assigned to them and, at the end of the day, the time taken to process complaints. The fact that most of them are part-time and that many are on contract means that a high turnover of commissioners can be expected, which risks compromising service continuity and quality. As for the promotion of the process, a concerted approach for the whole of Québec will be necessary to support local and regional action in this regard.

Moreover, a reading of the document *Lignes directrices relatives au comité de vigilance et de la qualité et au commissaire aux plaintes et à la qualité des services dans les agences de la santé et des services sociaux* [Guidelines regarding watchdog committees and complaints and service quality commissioners in health and social services agencies] reveals that the Department has not recommended a minimum staffing levels for commissioners and has not set a budget in this regard. If even these minimum parameters are not specified, in a context of scarcity of resources, it seems unlikely that the process as a whole can attain the necessary equilibrium to ensure diligent, high-quality processing of all complaints received.

SUPPORT AND CONCERNS

The Québec Ombudsman notes the activities that have been completed or are planned by the Ministère de la Santé et des Services sociaux in order to put the first-stage complaints procedure into practice. It can only support the current initiatives and encourage their diligent implementation. However, it remains concerned about the effects of commissioners' lack of availability on their ability to meet the demand for services from users and to carry out all their duties. In this regard, it is of the opinion that equity in access to the procedure and in the handling of complaints, regardless of region or institution, is not guaranteed.

MEASURES ARE NEEDED TO SPEED UP IMPLEMENTATION OF THE PROCEDURE

In light of the results of the recent analysis of the implementation of the complaint examination procedure, the Québec Ombudsman considers that the Ministère de la Santé et des Services sociaux must take measures to ensure that this operation is finalized as soon as possible. The measures are threefold:

- local and regional complaints and service quality commissioners must be able to perform all their duties as provided by the Act, including dealing with complaints and notifications, as well as the promotion of users' rights and of the complaint examination procedure;
- the ability of local and regional commissioners to deal with complaints within the established times must be strengthened;
- information provided to the public regarding the complaint examination procedure and the rights of health services and social services users should be improved and intensified.

THE CENTRAL ROLE OF THE WATCHDOG COMMITTEE

The primary mandate that the government entrusts to the watchdog committee is that of ensuring that the recommendations of the complaints and service quality commissioner, and those of the Québec Ombudsman, are followed up. The Act stipulates that the committee must analyze recommendations and reports submitted to the board of directors, which mainly focus on the quality, safety and effectiveness of services rendered and on the respect of users' rights. The watchdog committee must in turn make recommendations to the board of directors regarding action to be taken on these matters.

In May 2006, as part of the implementation of the Act, the Department issued guidelines specifying the responsibilities of the watchdog committee and those of the complaints and service quality commissioner.⁴ The role that the committee is called upon to play is crucial in guaranteeing the respect of users' rights to quality care and services.

In particular, the committee must examine and assess:

- the functioning of existing mechanisms (users' and residents' committee, council of physicians, dentists and pharmacists, council of nurses, multidisciplinary council, risk management committee, subcommittee on nosocomial infections, clinical ethics committee, research ethics committee, midwives council);
- the number and nature of complaints received and processed;
- the number and nature of problem situations and interventions performed;
- the conditions of practice in which the complaints and service quality commissioner works;
- activities to promote users' rights;
- the conciliation report;
- the work of the examining physician or the review committee;
- the nature of complaints referred to the council of physicians, dentists and pharmacists.

The committee must also check the follow-up accorded to:

- certification reports;
- quality assessment visits to institutions;
- recommendations of the Public Curator and coroner;
- recommendations of the external auditor relating to quality;
- reports on the quality of services provided by a laboratory;
- reports on inspection visits from a professional order;
- operating reports on the prevention and control of nosocomial infections.

Further to the survey it conducted, the Québec Ombudsman has found that only 70% of watchdog committees were in place by mid March 2007. With the Department, it will monitor developments in this implementation very closely.

4/ Ministère de la Santé et des Services sociaux, Direction de la qualité, *Lignes directrices relatives au comité de vigilance et de la qualité et au commissaire aux plaintes et à la qualité des services dans les agences de la santé et des services sociaux*, Québec City, May 2006, 21 pages.

PRIVATE CARE FACILITIES

In Québec there are a number of private facilities that provide care and services to various categories of clientele, and which, in principle, function as a complement to the public health and social services and network.⁵ In this regard, the holding of a permit is fundamental. Anybody wishing to operate an institution that fulfills any of the missions described in the Act must hold a permit, failing which he or she will be fined and have residents in his or her care transferred to another facility.

Under a regulation, private care facilities for the elderly are now required to obtain a compliance certificate. Private organizations providing services to persons addicted to drugs or alcohol, on the other hand, submit—on a voluntary basis—to a normative certification framework.⁶

PRIVATE CARE FACILITIES FOR THE ELDERLY

The compliance certificate that residences for the elderly must hold represents, in principle, a guarantee of the quality of services provided there. The *Regulation respecting the conditions for obtaining a certificate of compliance for a residence for the elderly*⁷ came into force on February 1, 2007. Under the transitional provisions set out in Bill 83, proprietors of such residences have two years to complete the certification procedure. The manager of the residence must produce an annual declaration for registration in the register of residences for the elderly. The complaint examination procedure applies fully to these residences, as do the intervention powers of the Québec Ombudsman. Controls—certification *a priori*, agencies and the Québec Ombudsman *a posteriori*—now provide supervision of these resources.

5/ In 2005-2006, the Department reported that there were 2,440 private residences with services for the elderly. *Rapport annuel de gestion 2005-2006*, supra, note 2, p. 21.

6/ This refers exclusively to the rules dealing with health and social services aspects, and excludes any other normative framework, for example, that relating to the Building Code of the *Public Buildings Safety Act*.

7/ *Gazette officielle du Québec*, partie II, January 10, 2007, pp. 89–92.

■ *The Regulation respecting the conditions for obtaining a certificate of compliance for a residence for the elderly*

In December 2006, the Québec Ombudsman submitted to the Minister its comments on the draft *Regulation respecting the conditions for obtaining a certificate of compliance for a residence for the elderly*. It pointed out the significant progress that the proposed framework represents for the respect of the elderly and protection of their rights, notably by introducing minimum standards to be met when accommodating these users, who are often vulnerable and isolated. The Québec Ombudsman did however identify certain worrying elements. It therefore suggested some additions and amendments. Its proposals centred on three main themes: prevention of abuse, monitoring of compliance, and permitted activities.

With regard to the prevention of abuse, the Québec Ombudsman asked the Minister to add a provision prohibiting donations and legacies made by a user to the administrator or an employee of a private residence for the elderly, unless the beneficiary is the donor's spouse or close relative. It also proposed including a provision that obliges the operator to meet the standards of the Régie du logement, by using the appendix of its lease, and to make this a condition of compliance for the residence. Moreover, according to the Québec Ombudsman, a residents' right to choose the caregiver from whom he or she will receive care and services, with respect for his or her privacy and autonomy, must be reasserted. In the same spirit, disclosure of information concerning the user's condition to those close to him or her must be re-centred on the express consent of the user or his or her mandatary.

With regard to monitoring of compliance, the Québec Ombudsman suggested that the draft regulation should specify the frequency of inspections by health and social services agencies. In addition, it felt that an attestation of compliance with the standards of the *Food Products Act* and the *Public Buildings Safety Act*, and also with municipal regulations, should be a prerequisite for the granting of certification to the residence.

Moreover, the Québec Ombudsman proposed that the regulation should limit activities permitted in private residences by clearly excluding activities that fall within the ambit of residential and long-term care centres (CHSLD). Lastly, it emphasized to the Minister that the regulation should contain criteria for defining an emergency situation that could lead to the use of restraint. An analysis of the regulation as adopted reveals that some of the recommendations of the Québec Ombudsman were disregarded.

PRIVATE RESOURCES FOR VULNERABLE PERSONS

In the course of its study of Bill 83, the Québec Ombudsman called for private residences and resources that accommodate clientele other than the elderly to be subject to the application of the complaints examination procedure. It referred in particular to drug-addicted persons and those suffering from mental health problems. The vulnerability of persons accommodated in this type of resource necessitates the same protection as that granted to the elderly. All private residences that wish to accommodate persons with particular needs, including care, and who receive persons referred by the health and social services network, should hold certification.

This proposal was rejected, on grounds of the limits of State interventions in the private sphere. However, the Act was amended to the effect that actors in the health and social services network must make sure, when they direct a user to one of these resources, that the resource provides high-quality services. Nevertheless, the situation of people who are referred to resources of this type remains a matter of concern. In the absence of specific provisions, the monitoring carried out by the Department and agencies of resources that receive these vulnerable clientele is based on general provisions for the health and security of persons. Should the resource fail to cooperate, the agency is as powerless as the users themselves.

The fact that the complaint examination procedure does not apply and that the Québec Ombudsman cannot intervene in private residences and resources for clientele other than the elderly has the effect of creating various user categories. All do not receive the same consideration. Although their vulnerability is often comparable with the elderly, persons suffering from mental health problems, intellectual disabilities, alcoholism or drug addiction, for example, do not enjoy the same rights and the same protection as the elderly.

Certification of private residences for the elderly has provided this clientele with living conditions in a better defined framework and subject to minimum standards. Other clientele do not enjoy this attestation of quality. If living conditions and services provided to these vulnerable persons are inadequate, which logically may arise more readily in an environment not subject to standards, the Québec Ombudsman cannot intervene. It is highly paradoxical that the means available to control these resources are fewer, because they do not hold an attestation of quality.

An example: a private resource for alcoholics and drug addicts

The Agence de la santé et des services sociaux de Montréal informed the Québec Ombudsman that two persons were complaining of the quality of care and services in a private facility. They alleged that medical follow-up was insufficient, and that blank medication prescriptions were signed by a physician and filled out by the proprietor, who in this way built up reserves of medication. According to what was reported, the proprietor herself decided on the medication to be administered. The competence of actors and the cleanliness of the premises were also at issue.

The Québec Ombudsman asked the municipal inspection department to check the salubrity of the premises. It also delegated a member of its staff, but the latter was refused access to the premises on account of the Québec Ombudsman's having no jurisdiction over residences of this type.

In response to this, the Québec Ombudsman requested that the Agence use its own powers of inspection to check whether the resource was illegally carrying out activities that are the responsibility of an institution.

In the absence of jurisdiction over private resources not holding a permit, but remaining concerned at the fate of drug addicts accommodated in this resource, the Québec Ombudsman informed the Minister of the situation, since the Agence considered itself unable to act on its own initiative. At the express request of the Minister, the Agence took steps.

This example clearly illustrates that the attitude of the resource frustrated all the systems designed to protect users and ensure that their rights are respected. Moreover, it is abnormal to have to have the Minister intervene in order for the Agence to be able to use its own powers of inspection.

The Québec Ombudsman is still of the opinion that private residences and resources that receive vulnerable clientele other than the elderly—including drug addicts, alcoholics and vagrants—should be subject to the application of the complaint examination procedure provided for in *An Act respecting health services and social services*.