



PARLIAMENTARY WATCH REPORT (BILLS AND DRAFT REGULATIONS)

The Québec Ombudsman performs legislative and regulatory watch activities under its enacting legislation, which confers it with the power to call the attention of the National Assembly and government to legislative, regulatory, and administrative reforms it deems to be of general interest. A watch is also undertaken under the Act respecting the Health and Social Services Ombudsman, which entrusts the Québec Ombudsman with ensuring that users of the health and social services network and their rights under the this act are respected.

The Québec Ombudsman analyzes all bills tabled in the National Assembly and draft regulations published in Gazette officielle du Québec that may affect respect of these rights and the quality of services for citizens. It intervenes when it deems necessary or at the express request of parliamentarians. Ministers and heads of public bodies occasionally solicit the Québec Ombudsperson's preliminary opinion about legislative or regulatory bills. The Ombudsperson then provides her opinion, in compliance with her mission to act pre-emptively.

In 2009–2010, 56 of the 68 bills tabled in the National Assembly and 125 of the 147 draft regulations published in Gazette officielle du Québec were analyzed. This analysis resulted in 22 interventions by the Québec Ombudsman concerning one draft bill, thirteen bills, and eight draft regulations. The following is a summary of these interventions.

Most interventions can also be consulted on the Québec Ombudsman website (www.protecteurducitoyen.qc.ca) under "Cases and Documentation."

Bill	Background, Interventions, and Follow-up
<p>Act to amend the Civil Code and other legislative provisions as regards adoption and parental authority (Draft bill)</p>	<p>In the event of adoptions in which parental relationships are not severed, the Québec Ombudsman believes that the court should have the power to judge each situation on a case-by-case basis and ensure that maintaining contact is always in the best interest of children. Although the wording of the bill specifies that the court must first ensure that adopters and the original parents are aware of the effects of such decisions, no details are provided regarding adoptees.</p> <p>In the event of an open adoption, the Québec Ombudsman wonders about the potential risks associated with maintaining contact with the original family, a source of potential confusion or conflict of loyalty for the adoptee. Given the possible consequences of an open adoption, the Québec Ombudsman wonders whether it would not be advisable to also offer parents a form of semi-open adoption.</p> <p>Still in regards to open adoptions, the Québec Ombudsman deems that the measures regarding communication agreements—which provide that these agreements are confirmed, modified, or revoked by the court, and that any conflicts regarding the application of confirmed agreements may be subjected to a dispute settlement procedure or court intervention—warrant further clarification. It wonders in particular about who would be in charge of settling disputes (would it necessarily be an accredited mediator under the Code of Civil Procedure of Québec?). It is also concerned that court intervention in postadoption procedures may place and maintain a child in a conflictual situation.</p> <p>In other respects, the Québec Ombudsman stresses the importance of ensuring that the public services involved be able to assume the additional responsibilities entrusted to them.</p> <p>With respect to the confidential nature of adoption records, the Québec Ombudsman deems that access to one’s medical history is a right. Consequently it wonders about the need for court intervention in this procedure and about the restrictions on disclosing medical records to medical authorities only in cases where there is risk of injury. It has therefore recommended that the possibility of a veto by the original parent be excluded with regard to an adoptee’s right to disclosure of his/her medical history.</p> <p>The Québec Ombudsperson spoke before the Committee on Institutions, and some of her recommendations—particularly those concerning adoptees’ access to their medical history—were received with interest. A prospective bill will indicate to what extent they will be retained.</p>
<p>An Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations (Bill 21, 2009)</p>	<p>The Québec Ombudsman shared its concerns regarding the coordination of the implementation of new activities so as not to prevent any break in service. It recommended that Office des professions be authorized to decree transitory provisions by regulation.</p> <p>This suggestion was not retained in the act adopted on June 18, 2009, and the Québec Ombudsman will therefore pay special attention to implementation of the new legislation.</p>

Bill	Background, Interventions, and Follow-up
<p>Act respecting clinical and research activities relating to assisted procreation (Bill 26, 2009)</p>	<p>The Québec Ombudsman is in agreement with the government's intention to introduce legislation to organize clinical and research activities relating to assisted procreation, to ensure that safe, high quality, ethical practices are used. Its concerns had to do with user access to a complaint processing mechanism, which was not specified in the bill.</p> <p>Although the act adopted on June 18, 2009, does not include any amendments in this regard, some principles of the draft Regulation respecting clinical activities relating to assisted procreation, published in Gazette officielle du Québec on March 24, 2010, lead the Québec Ombudsman to believe that it will be possible for the complaints processing system set forth under the Act respecting health services and social services to be at assisted procreation centers.</p>
<p>Act to modify the occupational health and safety regime, particularly in order to increase certain death benefits and fines and simplify the payment of the employer assessment (Bill 35, 2009)</p>	<p>The legislative amendment aimed to correct an unfair situation: an incarcerated individual who sustains a professional injury while working in a detention facility for pay amounting to 35% of minimum wage may receive compensation established according to the minimum wage in force. However, in the event of the incarcerated worker's death, benefits paid to a surviving spouse and dependents will be calculated on the basis of the wages paid, that is, less than the minimum wage.</p> <p>The Ombudsperson's delegates' intervention led the legislators responsible for the bill to add an amendment avoiding the undesirable effect of the proposed measure by entitling a surviving spouse and dependents, who are often in a vulnerable position, to death benefits calculated on the same basis as those of any other person.</p>
<p>Act to amend the Act respecting educational institutions at the university level and the Act respecting the Université du Québec with respect to governance (Bill 38, 2009)</p>	<p>The Ombudsman notes the absence of an obligation for university institutions to establish an impartial and independent complaints mechanism. Although the majority of university community members have access to an ombudsman, the Ombudsman deems that such a mechanism should be built into the bill so that all can benefit. The bill had not been enacted as of March 31, 2010.</p>

Bill	Background, Interventions, and Follow-up
<p>Act to amend the Act respecting transport infrastructure partnerships and other legislative provisions (Bill 41, 2009)</p>	<p>The Ombudsman recommended that the administrative process for the recovery of unpaid tolls be maintained, rather than being replaced by a penal process, in order to avoid judicializing the process and to reduce the administrative burden. This recommendation was rejected.</p> <p>The Ombudsman also recommended that individuals dealing with private partners exercising powers delegated by the minister responsible be given access to a complaints mechanism, as would be the case had these powers been exercised by the ministry involved. This recommendation was agreed upon, and the act as passed holds private partners to establish a complaints processing policy as well as possibility allowing individuals not satisfied with a partner's complaint review or the results of such a review the possibility of applying to the minister, opening the way for possible recourse to the Ombudsman.</p>
<p>Act to amend the General and Vocational Colleges Act with respect to governance (Bill 44, 2009)</p>	<p>The Ombudsman noted the need for the measure aimed at requiring colleges to establish a dispute settlement mechanism, but raised concerns regarding the measure's failure to address the broad principles essential to a legitimate and credible complaints processing mechanism in which individuals can have complete confidence. The Ombudsman therefore recommended that the ministry responsible be empowered to regulate complaints processing standards and conditions in order to ensure that they are harmonized with what is provided for in the Student Ombudsman under the Education Act.</p> <p>The Ombudsman also recommended that the mechanism selected be based on the one developed for the health and social services system. It was also recommended that this mechanism not be restricted to registered students, but that it also cover administrative decisions made at the time of admission. The bill had not been enacted as of March 31, 2010.</p>
<p>Code of Ethics and Conduct of the Members of the National Assembly (Bill 48, 2009)</p>	<p>The Ombudsman unreservedly supports subjecting the ombudsperson and deputy public protectors to the jurisdiction of the Ethics Commissioner following the example of other persons appointed by the National Assembly. The Ombudsman also commented more specifically on certain provisions of the bill. It recommended that the request for an advisory opinion from the Ethics Commissioner be made mandatory rather than optional for former cabinet ministers knowing themselves to be in one of the situations covered under the Code. It also gave its opinion regarding the deadline for the President of the National Assembly to submit the Ethics Commissioner's inquiry reports.</p> <p>In the interest of promoting people's trust in the Commissioner, the Ombudsman expressed reservations regarding the declared intent of the bill to completely exclude from the Code of Ethics and Conduct of the Members of the National Assembly the application of the Act respecting access to documents held by public bodies and the protection of personal information. The Ombudsman also recommended that a provision be added to allow for the replacement of the Ethics Commissioner in the event of termination or incapacity to fulfill his duties. The bill had not been enacted as of March 31, 2010.</p>

Bill	Background, Interventions, and Follow-up
<p>Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements and amending various legislative provisions (Bill 49, 2009)</p>	<p>The Ombudsman shared its comments regarding the failure to publish regulations in advance and its effect on people’s right to speak out on regulations and propose amendments to improve them. The recommendation was rejected.</p>
<p>Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions (Bill 51, 2009)</p>	<p>The Ombudsman shared its comments regarding the failure to publish regulations in advance and its effect on people’s right to speak out on regulations and propose amendments to improve them. The recommendation was rejected.</p>
<p>Act to amend the Act respecting health services and social services with regard to the certification of certain resources offering lodging to vulnerable clientele (Bill 56, 2009)</p>	<p>The Ombudsman noted that this certification answers a need that has been known for a number of years to regulate lodging services for all clientele, particularly those most vulnerable. The Ombudsman had repeatedly drawn the legislature’s attention to this need. The Ombudsman had also recommended that these resources be subject to the complaints system set out in the Act respecting health services and social services, and is therefore satisfied that persons in such lodgings will henceforth be fully entitled to have recourse under this system.</p> <p>The Ombudsman nonetheless shared certain concerns regarding implementation of the bill. In its brief to the Health and Social Services Committee, the Ombudsman proposed five action priorities, for which three recommendations were formulated:</p> <ul style="list-style-type: none"> • encourage dialogue among the key players to avoid delays in implementation; • make certification requirements more stringent, with emphasis on living environment quality.

Bill	Background, Interventions, and Follow-up
	<p style="text-align: center;">RECOMMENDATION 1</p> <p>Whereas in addition to their service mission, private and community lodging resources also have a mission of providing pleasant, quality living environments to their clientele;</p> <p>The Québec Ombudsman recommends:</p> <ul style="list-style-type: none"> – That requirements governing the qualitative aspects of living environments provided by lodging resources be strengthened, and that appropriate indicators be developed to this effect; – That in consequence, certification of private and community lodging resources also take these criteria and indicators into account. <ul style="list-style-type: none"> • Verify that quality is maintained; • Require suitable training for workers. <p style="text-align: center;">RECOMMENDATION 2</p> <p>Whereas the mission of the private and community lodging resources for vulnerable persons affected by this bill includes extensive responsibilities with respect to the delivery of health and social services to residents and, in some cases, with respect to their chances of social integration, and that specific professional qualifications are required to fulfill such a role;</p> <p>The Québec Ombudsman recommends:</p> <ul style="list-style-type: none"> – That worker training be a primary certification criteria in order to ensure that private and community residences have access to the required expertise. <ul style="list-style-type: none"> • Design an implementation process that encourages, as much as possible, the upgrading rather than closure of resources. <p style="text-align: center;">RECOMMENDATION 3</p> <p>Whereas certification criteria for private and community residences affected by the bill will require a number of organizations to make major changes to their premises, personnel, and operating procedures; whereas not all certification requirements are equally urgent; and whereas the certification process should not force anyone into a situation of homelessness or abandonment;</p> <p>The Québec Ombudsman recommends:</p> <ul style="list-style-type: none"> – That certification criteria be ranked by order of importance, notably with respect to the urgency of compulsory application; – That priority be giving to essential criteria affecting physical, psychological, and mental health and personal security;

Bill	Background, Interventions, and Follow-up
	<ul style="list-style-type: none"> - That transitional measures be provided for in the event that improvements cannot be effected immediately, so long as essential criteria are met; - That the Ministry, in conjunction with its agencies, plan for the reorientation of individuals whose lodging resources cannot meet certification requirements; these individuals must have access to a replacement solution that can meet their housing and service needs without delay; - That private and community residences affected by the bill have access to assistance in implementing the new conditions imposed by the Ministry; this assistance could involve the provision of useful information and transitional financing to allow for the required upgrading. <p>The Québec Ombudsman appeared before the Health and Social Services Committee on October 27, 2009. Bill 56 was passed on November 12, 2009. Given that the Ombudsman's recommendations dealt with implementation of the act, the Ombudsman will closely monitor the conditions of implementation, notably with respect to forthcoming statutory regulations.</p>
<p>Act to amend the Highway Safety Code regarding driving schools (Bill 69, 2009)</p>	<p>This bill was aimed at giving the government the regulatory power to set minimum and maximum prices for compulsory driver training courses. A recommendation to this effect had already been made by the Québec Ombudsman during the consultation on the Draft regulation to amend the Regulation respecting drivers' permits (see below). Fees required for motorcycle driver training and those potentially required for moped driver training were excluded from the draft regulation. The Québec Ombudsman requested that this exclusion be withdrawn, which it was.</p> <p>Contrary to the Québec Ombudsman's recommendation, the provision to exempt the first regulation on the price of driver training courses from prepublication requirements under the Regulations Act was not withdrawn from the bill, which prevents it from being subject to consultation. Nonetheless, as recommended by the Québec Ombudsman in a subsidiary recommendation, the minister presented his plans for a proposed ceiling price, which gave parliamentarians an opportunity to discuss the matter.</p>

Bill	Background, Interventions, and Follow-up
<p>Act to again amend the Highway Safety Code and other legislative provisions (Bill 71, 2009)</p>	<p>The Ombudsman drew the attention of parliament to the applicability of the measure aimed at making helmets mandatory for cyclists age 12 and under. Although the Ombudsman noted the advantage of this safety measure, it nonetheless questioned the reasons behind the age limit imposed.</p> <p>It also recommended that the regulations be made subject to the Transport Minister's right of disallowance should municipalities attempt to adopt measures to override the requirement that snowblowers over 900 kg be preceded by a supervisor on foot during snow removal operations in residential zones or where the speed limit is 50 km/h or less. This recommendation was welcomed by the Minister, who informed the Ombudsperson of her intention to submit an amendment to this effect. The bill had not been adopted as of March 31, 2010.</p>
<p>Act to provide a framework for mandatory state financing of certain legal services (Bill 83, 2009)</p>	<p>The services targeted by this bill relate to criminal trials. The Ombudsman believes that other amendments could be made to the legal aid system, notably to correct inequities toward incapacitated individuals represented by Curateur public when a curatorship is initiated. It recommended amendments so that incapacitated individuals financially eligible for legal aid be exempted from certain legal fees, as are other incapacitated individuals in the same financial circumstances but for whom proceedings were not initiated by Curateur public. It also recommended that proceedings to replace the legal representative be included among those to which such an exemption is applied. The bill had not been adopted as of March 31, 2010.</p>
Regulation proposals	Background, Interventions, and Follow-up
<p>Regulation to amend the Regulation respecting benefits (2009, Gazette officielle, 2nd part, 1718)</p>	<p>This draft regulation would make it possible for individuals to apply for Régie des rentes du Québec benefits by telephone. In the interests of maintaining records of applications and to give applicants proof of having applied, Ombudsman delegates suggested that a confirmation number be provided to individuals applying by telephone. The suggestion was noted, and the Ombudsman requested that the Régie keep it informed regarding followup of this suggestion.</p>
<p>Regulation to amend the Regulation respecting drivers' permits (2009, Gazette officielle, 2nd part, 2849)</p>	<p>This draft regulation makes driving courses mandatory. The Ombudsman, concerned that a substantial increase in the cost of driving courses could create an obstacle to acquiring a driver's license, recommended to the Transport Minister that prices for mandatory driving courses be regulated by law. The Minister's tabling of Bill 69 empowering the government to regulate minimum and maximum course prices confirmed the Ministry's favorable response to this recommendation..</p>

Regulation proposals	Background, Interventions, and Follow-up
<p>Regulation respecting the complaint examination procedure established by a school board (2009, Gazette officielle, 2nd part, 3283)</p>	<p>The Ombudsman is of the opinion that the draft regulation published does not meet all the conditions for credibility and effectiveness in guaranteeing the legitimacy and impartiality of the mechanism, particularly in the areas of immunity, power of inquiry, and uniform of application of natural justice throughout the system. It therefore recommended that certain improvements be made to the draft regulation. The regulation was, however, enacted without amendment.</p>
<p>Regulation to amend the Regulation respecting the use of tires specifically designed for winter driving (2009, Gazette officielle, 2nd part, 4496)</p>	<p>This draft regulation authorizes vehicles to be driven without winter tires in the last seven days before expiration of a long-term lease agreement, specifically after December 15. The Ombudsman had already intervened with Ministère des Transport on behalf of individuals who disagreed with having to pay for the purchase and installation of winter tires for a very short time, given that their vehicle lease was to expire in late December or early January. Aware and appreciative of this concern, the Ministry had then suggested that police departments use their discretion in the case of lease agreements expiring before January 15.</p> <p>The Ombudsman communicated its approval of the draft regulation to the Transport Minister, as it allows for a certain flexibility in application under exceptional circumstances while emphasizing that in the interests of road safety such departures from the rules requiring the use of winter tires should remain the exception.</p>
<p>Regulation to amend the Code of Ethics for Midwives (2009, Gazette officielle, 2nd part, 5613)</p>	<p>The Ombudsman observed that the draft regulation contained no provision regarding the disclosure of incidents or accidents to the user or user's representative, unlike for other health professionals and as provided for in the Act respecting health services and social services for events taking place in network institutions. The Ombudsman recommended to the chair of Office des professions du Québec that such provision be added to the Code of Ethics for Midwives. The chair advised the Ombudsperson that he would take this recommendation into account in his own recommendations to the government. The regulation had not been enacted as of March 31, 2010.</p>

Regulation proposals	Background, Interventions, and Follow-up
<p>Regulation to amend the Regulation respecting the reimbursement of certain expenses (medical reports) (2009, Gazette officielle, 2nd part, 5961))</p>	<p>The draft regulation provides for an increase in the maximum expenses reimbursed by Société de l'assurance automobile (SAAQ) for the medical reports of road accident victims. This increase reduces the gap between the amount these individuals have to pay for medical reports and the amount reimbursed by SAAQ. This should help road accident victims, particularly as the rates had not been increased since 1993. However, given that the rates suggested by Fédération des médecins omnipraticiens du Québec in 2009 are already much higher than what is proposed in this regulation, the Ombudsman considers that the concerns of road accident victims have not been fully accounted for and such individuals will possibly still have to pay additional amounts to obtain the medical reports required by SAAQ.</p> <p>The Ombudsman also recommended removing the provision to reduce the amount of reimbursement to the road accident victim if the physician's report is provided other than on the form provided by SAAQ, as this provision penalizes road accident victims, whereas it is intended as an incentive for physicians to use SAAQ forms.</p> <p>In order to avoid large gaps between costs reimbursed by SAAQ and the amounts road accident victims pay for medical reports, the Ombudsman recommended that provisions be added to require that reimbursement rates be reviewed periodically, at intervals not exceeding three years. The regulation had not been enacted as of March 31, 2010.</p>
<p>Regulation to amend the Code of Ethics of Physicians (2010, Gazette officielle, 2nd part, 54)</p>	<p>By virtue of changes proposed in this draft regulation, any physician who opts out or does not participate in the health insurance plan, or who demands payment for services not covered by the plan, must post, in public view in the clinic waiting area, the price of services and supplies and additional fees to be billed. Although in agreement with this change, which is in users' interest, the Ombudsman considers that other information should also be posted up, in order to provide sufficient information and avoid any confusion.</p> <p>Thus, the effect on users resulting from the physician's health insurance plan status (opted out or not participating), —little understood by the general public—for the reimbursement of expenses by Régie de l'assurance maladie, should also be put up.</p> <p>The Ombudsman also recommended that information regarding the conciliation and arbitration mechanism for physician accounts, through which users may submit any dispute over payment accounts to Collège des médecins, also be posted up, as this option is little known to users and could be better publicized.</p> <p>The Ombudsman also recommended that this information, as well as being prominently posted up in medical clinic waiting areas, be posted on the clinic website as applicable. The regulation had not been enacted as of March 31, 2010.</p>

Regulation proposals	Background, Interventions, and Follow-up
<p>Regulation to amend the Regulation respecting telematic gaming (2010, Gazette officielle, 2nd part, 708))</p>	<p>The Ombudsman recognizes that online gaming constitutes a reality that currently lies outside the scope of government control, that the difficulty in regulating this sector is a worldwide problem, and that this underground industry is conducive to the exploitation of persons vulnerable to compulsive gambling as well as the illicit use of revenue generated. The Ombudsman takes the position that, should the government operate its own online gaming sites, it should not do so without conditions, in order to ensure public safety and reduce as much as possible the negative repercussions of this activity. The Ombudsman believes that the selection of online game products should be thoroughly analyzed in advance, that the products be introduced according to a plan and increased gradually up to a certain limit, and that results be closely monitored, particularly in the case of products linked to pathological gambling.</p> <p>The Ombudsman recommended that an advisory committee of experts independent of the government, including government enterprises and networks be mandated to advise the government on regulation, milestones, and the rate at which telematic gambling would be established. It also recommended that the results of these independent experts' work be made public and examined by a parliamentary committee. The regulation had not been enacted as of March 31, 2010.</p>
<p>Intervention monitoring carried out in 2008-2009</p>	
<p>Act to amend the Courts of Justice Act and the Act respecting municipal courts with regard to court security (Bill 15, 2009)</p>	<p>The recommended change was to specify in the act that frisk searches carried out at courthouse entrances, except in emergency situations, be performed by agents who are of the same sex as the individual being searched.</p> <p>An amendment to address the comments made by the Ombudsperson and others was made to the bill.</p> <p>The amendment is modeled on the provision in the Code of Ethics of Police Officers, applying to special constables also, prohibiting searches by persons of the opposite sex except when necessary.</p>
<p>Draft regulation to amend the Regulation respecting the reimbursement of certain expenses (2008, Gazette officielle, 2nd part, 1735)</p>	<p>The draft regulation modified the reimbursement of certain travel expenses incurred by road accident victims seeking treatment. It set out a rate for private vehicle travel and added the possibility of applying a higher rate for such transportation under certain circumstances relating to the condition of the victim, the absence of public transit, or any savings achieved over the use of public transit or taxis. Previously, this rate could not be reimbursed without prior authorization from Société de l'assurance automobile (SAAQ). The Ombudsman recommended that the requirement for prior authorization from SAAQ be removed, in conformity with the possibility of reimbursement for taxis under the same conditions, which is not subject to such authorization.</p>

Intervention monitoring carried out in 2008-2009

A negative response was at first received from SAAQ's president and CEO, who announced the opposite change to what was requested. Then, the draft regulation was republished in April 2009 with this provision no longer included. The situation therefore remains unchanged.

Draft regulation to amend the Regulation respecting the diplomas issued by designated teaching establishments which give access to permits or specialist's certificates of professional corporations

(2008, Gazette officielle, 2nd part, 5643)

The draft regulation was designed to authorize a particular college to award a diploma conferring eligibility for a license from Ordre professionnel des inhalothérapeutes du Québec (OPIQ).

The Ombudsman voiced its concerns regarding the fact that certain public protection guarantees might not be respected.

Given that the institution could award diplomas allowing specialized licenses and certifications to be issued without fulfilling the requirements of OPIQ and those imposed on public institutions, and given that respiratory therapists can conduct procedures that could endanger the life and health of potential health services users, the Ombudsman recommended that:

- Further verifications be made before amending the regulation;
- Office des professions du Québec and OPIQ meet, including the parties involved if necessary, to assess the situation and find an appropriate solution.

The Ombudsman also reminded of the importance for all parties when seeking a solution, to take into account the financial and personal commitments of students currently in training, who registered for authorized training in good faith.

The regulation was enacted without amendment.

Given that the Office had made the requisite legal consultations with the two main agencies responsible for regulating the institution, OPIQ and Ministère de l'Éducation, du Loisir et du Sport, and that the Office cannot substitute its judgment for that of these agencies, which are also responsible for public safety, and since the arguments raised by the Ombudsman have not been considered by these agencies to be sufficient for them to modify their favorable view pertaining to the quality of the training and to the public protection provided, it seemed reasonable to accept the Office's position.

The Ombudsman's intervention nonetheless allowed for the college to subscribe to the comprehensive college examination, which all colleges offering such a training are subjected to, before the Office's formal recommendation. The Ombudsman's main compliance demand was therefore retained.

Intervention monitoring carried out in 2008-2009

Draft regulation to amend the Regulation respecting the activities engaged in and described in sections 39.7 and 39.8 of the Professional Code
(2009, Gazette officielle, 2nd part, 24)

The purpose of the proposed changes to the regulation was to allow operators and staff of private residences for the elderly to provide, under certain conditions, invasive care to assist in daily living activities—required on an ongoing basis and necessary for the maintenance of health—and to administer medications that have been prescribed and prepared for administration, a duty otherwise reserved for professionals only.

The Ombudsman recommended that the regulation specify the minimum level of training required for conducting these tasks and that measures be taken to allow a local CSSS to establish a knowledge update and quality control mechanism for the intended tasks. The Ombudsman also called for a provision requiring that the residence hold a valid certificate of compliance, so that residents be covered for liability in the event of errors committed by staff.

The Ombudsman also shared its concern regarding the consequences of the regulation on the maintenance of free services for elderly persons living in residences and on the continuity of services available to them: the Ombudsman seeks assurance that the CSSSs will always be prepared to provide these services for free to all elderly persons in need of them, regardless if their residence can provide them or not, in order to ensure that vulnerable individuals not be forced to cover the costs of these services or go without because their cost by far outreaches their ability to pay. The regulation had not been enacted as of March 31, 2010.

