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c 20 Nursing Homes Amendment Act, 1987

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CHAPTER 20

An Act to amend the Nursing Homes Act*Assented to May 27th, 1987*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Nursing Homes Act*, being chapter 320 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 55, section 223, is further amended by adding thereto the following clauses:

(ba) “equity share” means a share of a class of shares of a corporation that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

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(j) “security interest” means an agreement between a person and a licensee that secures the licensee’s payment or performance of an obligation by giving the person an interest in the licence.

(2) The said section 1 is further amended by adding thereto the following subsections:

(2) A person shall be deemed to have a controlling interest in a corporation if the person alone or with an associate directly or indirectly beneficially owns or controls,

Controlling
interest

(a) issued and outstanding equity shares in the corporation in an amount to permit the person to direct the management and policies of the corporation; or

(b) 10 per cent or more of the issued and outstanding equity shares in the corporation.

(3) One person shall be deemed to be an associate of another person if,

Associates

- (a) one person is a corporation of which the other person is an officer or director;
- (b) one person is a partnership of which the other person is a partner;
- (c) one person is a corporation that is controlled directly or indirectly by the other person;
- (d) both persons are corporations and one person is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other person;
- (e) both persons are members of a voting trust where the trust relates to shares of a corporation;
- (f) one person is the father, mother, brother, sister, child or spouse of the other person or is another relative who has the same home as the other person; or
- (g) both persons are associates within the meaning of clauses (a) to (f) of the same person.

Calculating
shares

(4) In calculating the total number of equity shares of a corporation beneficially owned or controlled for the purposes of this Act, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as having the number of shares equal to the total number of votes it carries.

2. The said Act is amended by adding thereto the following section:

Fundamental
principle

1a.—(1) The fundamental principle to be applied in the interpretation of this Act and the regulations is that a nursing home is primarily the home of its residents and as such it is to be operated in such a way that the physical, psychological, social, cultural and spiritual needs of each of its residents are adequately met and that its residents are given the opportunity to contribute, in accordance with their ability, to the physical, psychological, social, cultural and spiritual needs of others.

Residents'
bill of
rights

(2) Every licensee shall ensure that the following rights of residents are fully respected and promoted:

1. Every resident has the right to be treated with courtesy and respect and in a way that fully recognizes the resident's dignity and individuality and to be free from mental and physical abuse.
2. Every resident has the right to be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his or her needs.
3. Every resident has the right to be told who is responsible for and who is providing the resident's direct care.
4. Every resident has the right to be afforded privacy in treatment and in caring for his or her personal needs.
5. Every resident has the right to keep in his or her room and display personal possessions, pictures and furnishings in keeping with safety requirements and other residents' rights.
6. Every resident has the right,
 - i. to be informed of his or her medical condition, treatment and proposed course of treatment,
 - ii. to give or refuse consent to treatment, including medication, in accordance with the law and to be informed of the consequences of giving or refusing consent,
 - iii. to have the opportunity to participate fully in making any decision and obtaining an independent medical opinion concerning any aspect of his or her care, including any decision concerning his or her admission, discharge or transfer to or from a nursing home, and
 - iv. to have his or her medical records kept confidential in accordance with the law.
7. Every resident has the right to receive reactivation and assistance towards independence consistent with his or her requirements.
8. Every resident who is being considered for restraints has the right to be fully informed about

the procedures and the consequences of receiving or refusing them.

9. Every resident has the right to communicate in confidence, to receive visitors of his or her choice and to consult in private with any person without interference.
10. Every resident whose death is likely to be imminent has the right to have members of the resident's family present twenty-four hours per day.
11. Every resident has the right to designate a person to receive information concerning any transfer or emergency hospitalization of the resident and where a person is so designated to have that person so informed forthwith.
12. Every resident has the right to exercise the rights of a citizen and to raise concerns or recommend changes in policies and services on behalf of himself or herself or others to the residents' council, nursing home staff, government officials or any other person inside or outside the nursing home, without fear of restraint, interference, coercion, discrimination or reprisal.
13. Every resident has the right to form friendships, to enjoy relationships and to participate in the residents' council.
14. Every resident has the right to meet privately with his or her spouse in a room that assures privacy and where both spouses are residents in the same nursing home, they have a right to share a room according to their wishes, if an appropriate room is available.
15. Every resident has a right to pursue social, cultural, religious and other interests, to develop his or her potential and to be given reasonable provisions by the nursing home to accommodate these pursuits.
16. Every resident has the right to be informed in writing of any law, rule or policy affecting the operation of the nursing home and of the procedures for initiating complaints.
17. Every resident has the right to manage his or her own financial affairs where the resident is able to do

so, and where the resident's financial affairs are managed by the nursing home, to receive a quarterly accounting of any transactions undertaken on his or her behalf and to be assured that the resident's property is managed solely on the resident's behalf.

18. Every resident has the right to live in a safe and clean environment.

19. Every resident has the right to be given access to protected areas outside the nursing home in order to enjoy outdoor activity, unless the physical setting makes this impossible.

(3) Without restricting the generality of subsection (1), this Act and the regulations are to be interpreted so as to advance the objective that the resident's rights set out in subsection (2) be respected. Further guide to interpretation

(4) There shall be a written contract relating to the admission of every resident to a nursing home. Written contract

(5) A contract entered into in accordance with subsection (4) or (8) shall include, Provisions to be included

(a) a statement of the rights of the resident under subsection (2) and a statement by the licensee agreeing to respect and promote those rights;

(b) the information necessary to enable the resident to make a complaint regarding the nursing home to the Ministry;

(c) any agreement for additional services and the charges for those services; and

(d) the name and address of the person who will act, if necessary, as the representative of the resident for the purposes of this Act and the regulations.

(6) A contract entered into in accordance with subsection (4), (8) or (9) shall be reviewed annually by the resident or the resident's representative and the licensee. Annual review

(7) Every licensee shall post a copy of subsections (1), (2), (4), (5) and (6) in a prominent place in the nursing home. Posting of information

(8) Subject to subsection (9), every licensee shall, within ninety days after the coming into force of this Act, enter into Transition

a written contract with every person who is a resident at that time and has not entered into a contract under subsection (4), relating to the services provided by the nursing home.

Idem

(9) Where either party described in subsection (8) refuses to enter into a written contract, the licensee shall note that refusal in the resident's records and a contract between the licensee and the resident shall be deemed to have been made containing the provisions enumerated in clauses (5) (a) and (b) and, with the concurrence of the resident, containing the provisions enumerated in clauses (5) (c) and (d).

3.—(1) Subsection 4 (1) of the said Act is amended by striking out “subsection (2)” in the first line and inserting in lieu thereof “the following subsections”.

(2) Subsection 4 (2) of the said Act is amended by striking out “Notwithstanding subsection (1)” in the first line.

(3) Subsection 4 (3) of the said Act is amended by striking out “Notwithstanding subsection (1)” in the first line.

(4) Subclause 4 (4) (d) (ii) of the said Act is amended by striking out “or” and inserting in lieu thereof “and”.

(5) Section 4 of the said Act is amended by adding thereto the following subsections:

Idem

(4a) In considering under subsection (2) whether it is in the public interest to grant a licence to establish, operate or maintain a nursing home in an area, the Minister shall also take into account,

- (a) the effect that granting the licence would have on the concentration of ownership of nursing homes,
 - (i) in the area,
 - (ii) in the area and any other area, or
 - (iii) in Ontario; and
- (b) the effect that granting the licence would have on the balance between non-profit and profit-oriented nursing homes,
 - (i) in the area,
 - (ii) in the area and any other area, or

(iii) in Ontario.

(4b) For the purpose of clause (4a) (b), the Minister shall announce, annually, in the Legislature the desired balance between non-profit and profit-oriented nursing homes. Idem

(6) Subsection 4 (5) of the said Act is repealed and the following substituted therefor:

(5) Subject to section 7, the Director may refuse to issue a licence where in the Director's opinion, Grounds for refusal

- (a) the proposed nursing home or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location;
- (b) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home will not be operated in accordance with the law and with honesty and integrity;
- (c) the applicant or, where the applicant is a corporation, its officers or directors or the persons with a controlling interest in it are not competent to operate a nursing home in a responsible manner in accordance with this Act and the regulations or are not in a position to furnish or provide the required services; or
- (d) the past conduct of the applicant, or where the applicant is a corporation, of its officers, directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home will be operated in a manner that is prejudicial to the health, safety or welfare of its residents.

(7) Subsection 4 (8) of the said Act is repealed.

4. The said Act is further amended by adding thereto the following sections:

4a.—(1) The Director may undertake to issue a licence to an applicant on condition that the applicant agrees to satisfy the conditions specified by the Director. Undertake to issue licence

Issue licence,
if conditions
met

(2) Where the Director determines that the applicant has complied with the specified conditions, the Director shall issue the licence.

Notice
to cancel
undertaking

(3) Where the Director determines that the applicant has not complied with the specified conditions, the Director by written notice to the applicant may propose to cancel the undertaking.

Request
for review

(4) The applicant may submit to the Minister a written request for review asking that the Minister extend the undertaking and amend its conditions.

Minister's
decision

(5) Where the Minister receives a request for review within fifteen days after delivery of the notice under subsection (3), the Minister may extend the undertaking and amend its conditions or may cancel the undertaking.

Undertaking
cancelled

(6) Where the Minister does not receive a request for review within fifteen days after delivery of the notice under subsection (3), the undertaking shall be deemed to be cancelled.

Surrender
and issue
of licence

4b.—(1) Where a licensee notifies the Director that the licensee intends to surrender a licence to the Director on condition that the Director issue in its place a licence to a specified person, the specified person may apply for the issuance of the licence under this Act.

Idem

(2) Subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications to an application for a licence under subsection (1).

Idem

(3) Upon receiving notice that the Director intends to approve an application under subsection (1), the licensee shall surrender the licence and the Director shall issue a licence to the applicant.

Share
transfer
R.S.O. 1980,
c. 466

4c.—(1) Where a corporation that is a private company as defined in the *Securities Act* is a licensee, it shall not permit an issue or transfer of equity shares of its capital stock that has the effect of changing the ownership or controlling interest in the corporation without the prior approval of the Director.

Idem

(2) In deciding whether to approve an issue or a transfer of shares under subsection (1), the Director shall treat the corporation as proposed to be constituted after the transfer as if it were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

4d.—(1) Where a licensee is a corporation, the licensee shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation. Duty of corporation to notify Director

(2) Where a corporation has an interest in a licence, and the corporation or its officers or directors have reason to believe that an issue or transfer of equity shares of its capital stock or the happening of a condition by which shares of its capital stock acquire voting rights results or may result in a person acquiring a controlling interest in the corporation, the person shall so notify the Director forthwith. Idem

(3) The Director annually, in writing, shall direct a corporation that has an interest in a licence or its officers or directors to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of equity shares of capital stock in the corporation, which statement shall contain the information that in the opinion of the Director is reasonably necessary to enable the Director to determine, Statement required

- (a) what persons, if any, have a controlling interest in the corporation; and
- (b) what persons, if any, own or beneficially own directly or indirectly the persons or a controlling interest in the persons mentioned in clause (a).

(4) The Director may require the information described in subsection (3) to be provided more frequently than annually if, in the Director's opinion, it is reasonably necessary for the purposes set out in subsection (3). Idem

4e.—(1) A person who has a security interest in a licence shall not exercise that interest without the approval of the Director if exercise of the interest would change the ownership or controlling interest in the licence. Exercise of security interest

(2) In deciding whether to approve an exercise of a security interest under subsection (1), the Director shall treat the person seeking to exercise the interest as if the person were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications. Matters to be considered

4f.—(1) A licensee shall not enter into a contract whose effect is to change the management of a nursing home or the ownership or controlling interest in a licence without the approval of the Director. Management contracts

Matters
to be
considered

(2) In deciding whether to approve a contract described in subsection (1), the Director shall treat the person who would take over the management of the nursing home or the ownership or controlling interest in the licence under the contract as if the person were an applicant for a licence and subsections 4 (1), (2) and (4a) and clauses 4 (5) (b), (c) and (d) apply with necessary modifications.

No decision
without
public
submissions

4g.—(1) The Director shall not issue a licence, undertake to issue a licence under section 4a, reissue a licence under section 4b or approve an issue or transfer of shares under section 4c unless the public has been given notice of the request to do so and an opportunity to make written and oral submissions in accordance with this section.

Idem

(2) The Director shall not renew a licence unless the public has been given notice of the request to do so and an opportunity to make written submissions in accordance with this section.

Idem

(3) Without limiting the requirement on the Director to give the public an opportunity for oral submissions under subsection (1), the Director shall ensure that for each nursing home at least once in every five years the public is given notice of the request to carry out a matter described in subsection (1) or (2) and an opportunity to make oral submissions with respect to it in accordance with this section.

Public
meeting

(4) Where the opportunity for oral submissions is required under subsection (1) or (3), the Director shall cause a public meeting to be held concerning the request before making a decision and that meeting shall be held in the area where the nursing home is located.

Idem

(5) Notwithstanding subsection (4), where the public meeting concerns an issue or transfer of shares under section 4c in respect of a licensee that owns or controls more than one nursing home and those nursing homes are located in different areas, the Director shall determine where the meeting shall be held.

Idem

(6) If the Director is not able to chair the public meeting, the Director shall designate a representative of the Ministry to do so, and that representative shall prepare and give the Director a written report of the proceedings.

Notice

(7) At least thirty days before a decision in relation to a matter described in subsection (1) or (2) is to be made, the Director shall cause a notice inviting submissions to be published in a newspaper having general circulation in the area

where the nursing home is located or intended to be located and the notice shall,

- (a) contain an explanation of the request being made and the reasons for it;
- (b) state that any person may make written submissions to the Director concerning the request; and
- (c) state that the Director will consider any submissions before making a decision.

(8) Where the Director is required to hold a public meeting, the notice required by subsection (7) shall be published at least thirty days before the public meeting is held and shall also invite any person interested in making oral submissions to attend the meeting and express his or her opinions and recommendations concerning the request. Idem

(9) Where the request concerns an existing nursing home, the Director shall give a copy of the notice described in subsection (5) to the licensee and the licensee shall cause it to be posted in a conspicuous place in the nursing home. Idem

(10) The Director shall consider any submissions received under this section before making a decision concerning a matter described in subsection (1) or (2). Submissions to be considered

5. Clauses 5 (d) and (e) of the said Act are repealed and the following substituted therefor:

- (d) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the home is not being or will not be operated in accordance with the law and with honesty and integrity;
- (e) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable grounds for belief that the licensee, officers, directors or persons are not competent to operate a nursing home in a responsible manner in accordance with this Act and the regulations or are not in a position to furnish or provide the required services;
- (f) the conduct of the licensee or, where the licensee is a corporation, its officers or directors or the persons with a controlling interest in it affords reasonable

grounds for belief that the home is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of its residents;

- (g) the licensee has ceased operating the nursing home for a period of at least six months and is not taking reasonable steps to prepare the nursing home to re-open;
- (h) the licensee is a corporation described in subsection 4c (1) that has permitted an issue or transfer contrary to that subsection;
- (i) a corporation or its officers or directors have failed to make a report or statement to the Director, contrary to section 4d;
- (j) a person who has a security interest in a licence has exercised that interest contrary to subsection 4e (1) without the approval of the Director; or
- (k) the licensee has entered into a contract described in subsection 4f (1) without the approval of the Director.

6. Section 7 of the said Act is amended by adding thereto the following subsections:

Idem

(2a) A licensee who requires a hearing shall provide proof with the notice requiring a hearing that the licensee has mailed or delivered to the residents' council and has posted in a prominent place in the nursing home a copy of the Director's notice with written reasons therefor and a copy of the notice requiring a hearing.

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Opportunity to comply

(4a) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the issue or retention of the licence, that it would be just and reasonable to give the licensee that opportunity and that delaying the hearing will not adversely affect the health, safety or welfare of the residents.

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Exception for competition

(7) This section does not apply to an applicant seeking the issue or the undertaking for the issue of a licence where in the

Director's opinion another applicant better meets the Director's conditions for the issue of the licence.

7.—(1) Subsection 8 (1) of the said Act is repealed and the following substituted therefor:

(1) The following are parties before the Board under this Act, Parties

- (a) the Director;
- (b) the applicant or the licensee who has required the hearing;
- (c) any resident or group of residents who request party status;
- (d) any employee or group of employees who request party status; and
- (e) any other person the Board may specify.

(2) Subsection 8 (2) of the said Act is repealed and the following substituted therefor:

(2) The Board may permit any person who is not a party before it, including a resident, a representative of a resident, an employee of a nursing home or any other person who may be affected by its decision, to make written or oral submissions to the Board, and where it does so those submissions may be made either personally or through an agent. Submissions

(3) Subsection 8 (3) of the said Act is amended by striking out "An applicant or licensee who is" in the first line and by inserting after "subsection (1)" in the second line "and a person who is permitted to make submissions to the Board under subsection (2)".

(4) Subsection 8 (7) of the said Act is amended by striking out "and heard the evidence and argument of the parties" in the third and fourth lines and inserting in lieu thereof "heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2)".

8. Section 11 of the said Act is repealed.

9.—(1) Subsection 12 (1) of the said Act is amended by striking out "legal representatives where the residents are unable so to do" in the fourth and fifth lines and inserting in lieu thereof "representatives".

(2) Subsection 12 (3) of the said Act is amended by inserting after "revoked" in the first line "and the revocation becomes final or where the nursing home is otherwise being operated without a licence".

10.—(1) Subsection 13 (2) of the said Act is repealed and the following substituted therefor:

Relief in special cases

(2) Where, in the opinion of the Director, special circumstances warrant reducing or increasing the facilities, services for residents or bed capacity required in an extended care unit under subsection (1), the Director may, by order, authorize the reducing or increasing of the said facilities, services for residents or bed capacity to such amount, for such times and under such conditions as are specified in the order.

(2) Section 13 of the said Act is amended by adding thereto the following subsections:

Agreement for extra services

(3) The Minister may enter into an agreement with a licensee for the provision of services in addition to those provided for under this Act and the regulations.

Notice of services

(4) Upon entering into an agreement with the Minister under subsection (3), the licensee shall give a written notice to the residents' council and to each resident or his or her representative of the additional services to be provided.

11.—(1) Section 14 of the said Act is amended by striking out "or" at the end of clause (b) and by adding thereto the following clauses:

- (d) for services entered into under an agreement described in subsection 13 (3), the amount provided for by the agreement;
- (e) for services not mentioned in clauses (a) through (c) that are designated by the regulations, the amount prescribed by the regulations; or
- (f) for services not mentioned in clauses (a) through (e), the amount provided for under written agreements for those services between the licensee and the individual residents.

(2) The said section 14 is further amended by adding thereto the following subsections:

Idem

(2) The Director may permit a licensee to charge a specific amount greater than the amount prescribed by the regulations

for a service described in clause (1) (e) where the licensee demonstrates to the Director that the actual cost of providing the service is greater than the amount prescribed by the regulations.

(3) The licensee shall provide each resident or representative of the resident with an itemized quarterly statement of moneys held by the nursing home on behalf of the resident and charges made to the resident for services not mentioned in clauses (1) (a) through (c). Quarterly statements

12. Section 15 of the said Act is repealed and the following substituted therefor:

15.—(1) Where any payment referred to in clause 14 (1) (a) or (d) is accepted by or on behalf of a licensee and the payment exceeds the amount permitted under section 14 or the service has not been rendered or has been inadequately rendered, the Minister may, Recovery of excess payment

- (a) withhold payments due to the licensee to recover the excess payment or the amount for which no service or inadequate service was rendered; or
- (b) bring an action to recover from the licensee that amount, with costs, by action in a court of competent jurisdiction.

(2) Where any payment referred to in clause 14 (1) (b), (c), (e) or (f) is accepted by or on behalf of a licensee and the payment exceeds the amount permitted under section 14, the service has not been rendered or has been inadequately rendered or in the case of a service described in clause 14 (1) (f) there was no written agreement, the Minister may, Idem

- (a) order the licensee to pay back to the person from whom it was accepted the excess payment or the amount for which no service or inadequate service was rendered; or
- (b) withhold payments due to the licensee for the purpose of recovering the excess payment or the amount for which no service or inadequate service was rendered and pay the amount recovered to the person from whom it was accepted by or on behalf of the licensee.

13.—(1) Subsection 17 (1) of the said Act is repealed and the following substituted therefor:

Inspection

(1) An inspector without a warrant at any time may enter upon the premises, including the business premises, of a nursing home to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

(2) Subsection 17 (2) of the said Act is amended by striking out “may at any reasonable time” in the fourth line and inserting in lieu thereof “without a warrant at any reasonable time may”.

(3) Section 17 of the said Act is amended by adding thereto the following subsection:

Warrant

(2a) No inspector shall enter any room or place that is not in a nursing home and that is actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*.

R.S.O. 1980,
c. 400

(4) Subsection 17 (3) of the said Act is repealed and the following substituted therefor:

Powers on inspection

(3) Upon an inspection under this section, the inspector,

- (a) is entitled at any reasonable time to free access to all books of account, documents, bank accounts, vouchers, correspondence and records, including payroll records, records of staff hours worked, medical and drug records and any other records that are relevant for the purposes of the inspection or required to be kept under this Act or the regulations;
- (b) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may remove any material referred to in clause (a) that relates to the purpose of the inspection in order to make a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person whose premises are being inspected;
- (c) may inspect the premises and operations;
- (d) may examine or test samples of substances to ensure that the regulations are being complied with; and
- (e) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may

remove a substance or a sample of a substance referred to in clause (d) in order to conduct further tests, for any purpose reasonably necessary to carry out effectively the purposes of this Act.

(3a) No person shall obstruct the inspector or withhold, destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of the inspection.

Not to obstruct inspector

(5) Section 17 of the said Act is further amended by adding thereto the following subsection:

(4a) A certificate as to the result of any test that contains the name and a statement of the qualifications of the person who conducted the test and purports to be signed by that person is, without proof of the office or signature of that person, receivable in evidence as *prima facie* proof of the facts stated in the certificate for all purposes in any proceeding or prosecution if it has been served on any party or defendant to the proceeding or prosecution within a reasonable time before the proceeding or trial in which it is to be adduced.

Admissibility of test results

(6) Subsection 17 (5) of the said Act is repealed.

14. The said Act is further amended by adding thereto the following sections:

17a.—(1) A person other than a resident who has reasonable grounds to suspect that a resident has suffered or may suffer harm as a result of unlawful conduct, improper or incompetent treatment or care or neglect shall forthwith report the suspicion and the information upon which it is based to the Director.

Reporting of harm to resident

(2) No person shall dismiss, discipline or penalize another person because,

Protection of persons reporting

- (a) a report has been made to the Director under subsection (1);
- (b) the Director has been advised of a breach of this Act or the regulations; or
- (c) the Director has been advised of any other matter concerning the care of a resident or the operation of a nursing home that the person advising believes ought to be reported to the Director,

unless the other person acts maliciously or without reasonable grounds.

- Idem (3) No person shall coerce, intimidate or attempt to coerce or intimidate another person because information described in clause (2) (a), (b) or (c) has been given to the Director.
- Idem (4) No person shall include in a report to the Director under subsection (1) information the person knows to be false.
- Duty on practitioners
R.S.O. 1980, c. 196 (5) Notwithstanding that the information on which a report may be based is confidential or privileged, subsection (1) also applies to a legally qualified medical practitioner or a person registered under the *Health Disciplines Act* to practice a health discipline and no action for making the report shall be commenced against a practitioner or person who acts in accordance with subsection (1) unless that person acts maliciously or without reasonable grounds for the suspicion.
- Privilege of solicitor (6) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.
- Director to investigate (7) The Director shall cause any report made under subsection (1) to be investigated forthwith after receiving it.
- Licensee to forward complaints **17b.**—(1) A licensee shall forward forthwith on receipt to the Director any written complaint the licensee receives concerning the care of a resident or the operation of the nursing home.
- Statement of licensee (2) The licensee shall include with a complaint forwarded under subsection (1) a statement of reply, setting out,
 - (a) what the licensee has done to remedy the complaint;
 - (b) what the licensee proposes to do to remedy the complaint and within what time the licensee proposes to do it; or
 - (c) that the licensee believes the complaint to be unfounded and the reasons for the belief.
- Director to investigate (3) The Director shall cause any complaint received under subsection (1) to be investigated forthwith after receiving it.
- Immediate investigation **17c.** Where the Director receives a report from any source that gives the Director reasonable grounds to believe that the health, safety or welfare of a resident may be at risk, the Director shall cause an investigation to be commenced and the nursing home in which that resident lives to be visited forthwith.

17d.—(1) A licensee shall, at the end of each year as defined in the regulations, prepare or cause to be prepared for each of the licensee's nursing homes statements of the operation and financial affairs of that nursing home during the preceding year. Financial reporting

(2) The statements shall include, Idem

- (a) a statement of the revenue received by the nursing home, or by the licensee in respect of the nursing home, from the Ministry, from residents and from other sources;
- (b) a statement, broken down by categories, of the expenditures of the nursing home, or of the licensee in respect of the nursing home, including,
 - (i) payments to or for the benefit of the licensee, persons associated with the licensee and persons who provide management or administrative services in respect of the nursing home,
 - (ii) expenditures in respect of staff salaries and benefits, broken down by categories of staff,
 - (iii) expenditures for food, housekeeping, laundry and other goods and services,
 - (iv) payments made and amounts charged or recorded for depreciation, debt carrying charges, rent, and business and realty taxes;
- (c) any other information respecting the operation and financial affairs of the nursing home that is prescribed by the regulations.

(3) Where a licensee alone or with associates owns or has a controlling interest in more than one nursing home, the statements required under subsection (1) shall include, in addition to statements prepared for each of the licensee's nursing homes, a consolidated statement of the operation and financial affairs of all of those nursing homes and that consolidated statement shall include the information described in subsection (2). Idem

(4) The statements shall be made in the form and manner prescribed by the regulations and shall be certified by the licensee's auditor. Idem

Statement to
be filed

(5) A licensee shall file the statements referred to in subsection (1) with the Minister within ninety days after the end of the licensee's fiscal year.

Posting
and public
inspection

(6) The licensee shall post a copy of the statements referred to in subsection (1) in a prominent place in the nursing home.

Residents'
council

17e.—(1) Whenever at least three persons who are either residents in a nursing home or representatives of residents so request, a residents' council shall be established for that nursing home.

Idem

(2) The residents' council shall be established and conducted in the manner provided for by the regulations.

Members

(3) Each resident, or where the resident is unable to participate, the resident's representative may be a member of the residents' council and, in addition, a person selected by the resident or the representative may be a member of the residents' council.

Idem

(4) The Minister, at the request of a residents' council, may appoint no more than three persons to be members of the residents' council and those persons shall serve as members at the pleasure of the residents' council.

Idem

(5) The persons appointed under subsection (4) shall be persons who live in the area in which the nursing home is located and who are not employed by and do not have a contractual relationship with the Ministry.

Idem

(6) No licensee or where the licensee is a corporation, no officer, director or person with a controlling interest in it and no member of the staff of a nursing home shall be a member of a residents' council.

Obligation of
administrator

(7) Every administrator shall in respect of each nursing home that he has charge of, within ninety days of being licensed, convene a meeting of the residents or their representatives, to advise the residents that they have a right to form a residents' council.

Idem

(8) Where a residents' council is not established in a nursing home after the convening of a meeting under subsection (7), the administrator shall convene such a meeting at least once each year thereafter until a residents' council is established.

(9) Where a meeting is held under subsection (7) or (8), ^{Idem} the administrator shall notify the Director within thirty days of the results of the meeting.

(10) Where three or more residents or their representatives ^{Idem} at any time express an interest to their administrator in forming a residents' council, the administrator shall forthwith notify the Director of the interest and assist the residents or their representatives in forming a council within sixty days of the request.

17f. It is the function of a residents' council and it has the ^{Powers of residents' council} power to,

- (a) advise residents respecting their rights and obligations under this Act;
- (b) advise residents respecting the rights and obligations of the licensee under this Act;
- (c) meet regularly with the licensee to,
 - (i) review Ministry inspection reports,
 - (ii) review the allocation of money for food, supplies and services provided by the nursing home,
 - (iii) review the statements filed under section 17d when they are filed, and
 - (iv) review the operation of the nursing home;
- (d) attempt to mediate and resolve any dispute between a resident and the licensee; and
- (e) report to the Minister any concerns and recommendations that in its opinion ought to be brought to the Minister's attention.

17g.—(1) The Minister, with the consent of a residents' ^{Residents' council assistant} council, may appoint a residents' council assistant to assist the residents' council in carrying out its responsibilities.

(2) In carrying out his or her duties, a residents' council ^{Idem} assistant shall take instructions from and report to the residents' council.

Entry
not refused

(3) No person shall refuse entry to a nursing home to a residents' council assistant or obstruct a residents' council assistant.

Licensee
to
co-operate

17h. The licensee shall co-operate with the residents' council and the residents' council assistant and shall provide the information, including financial information, and assistance to them provided for by the regulations.

Committee,
etc., not
personally
liable

17i. No proceeding shall be commenced against a member of a residents' council or a residents' council assistant for any act done in accordance with section 17f, unless the act is done maliciously or without reasonable grounds.

15. Section 19 of the said Act is repealed and the following substituted therefor:

Liability
of licensee

19.—(1) In addition to any other liability for an offence under this Act or the regulations, the licensee is guilty of an offence for the contravention of any provision of this Act except subsection 17a (1) or of the regulations that creates an obligation in respect of a nursing home,

- (a) without imposing a duty on a specified person to carry it out; or
- (b) by imposing a duty on a specified person other than the licensee to carry it out.

Idem

(2) Notwithstanding subsection (1), a licensee is guilty of an offence under subsection (1) if the licensee contravenes subsection 17a (1).

Penalty

19a. Any person who contravenes any provision of this Act or the regulations, except subsection 12 (1), is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for a first offence and not more than \$10,000 for each subsequent offence.

Evidence
of disabled
resident

19b.—(1) Where a party to a proceeding under section 19 or 19a wishes to call as a witness in the proceeding a resident who by reason of age, infirmity or physical disability is unable to attend the proceeding, the party may apply to a provincial judge for an order appointing a justice of the peace to attend upon the witness and to take the evidence of the witness under oath.

Idem

(2) Where a party to a proceeding before the Board under this Act wishes to call as a witness in the proceeding a resident who by reason of age, infirmity or physical disability is

unable to attend the proceeding, the members of the Board who are holding the hearing, at the request of the party, may attend upon the witness and take the evidence of the witness.

(3) A medical report signed by a legally qualified medical practitioner stating that the practitioner believes the resident is unable to attend a proceeding by reason of age, infirmity or physical disability is *prima facie* proof of the inability of the witness to attend the proceeding.

Medical report sufficient proof

(4) A person shall not take evidence from a resident under subsection (1) or (2) unless reasonable notice of the time for taking the evidence is given to all parties to the proceeding and each party attending is given an opportunity to examine or cross-examine the resident.

Opportunity to examine

(5) A transcript of the evidence of a resident taken under subsection (1) and certified as correct by the person who recorded it may be read in evidence in a proceeding under this Act.

Transcript as evidence

16.—(1) Clause 20 (j) of the said Act is amended by adding at the end thereof “and governing their form and content”.

(2) Section 20 of the said Act is amended by adding thereto the following clauses:

(ma) respecting the form and content of requests for proposals for the issuing of nursing home licences;

(ta) designating services to be provided to residents by licensees for which no more than a prescribed amount may be charged and prescribing that amount;

(tb) defining “year” for the purposes of subsection 17d (1) (financial reporting), prescribing other information respecting the operation and financial affairs of the nursing home for the purposes of clause 17d (2) (c), and prescribing the form and manner in which statements shall be made;

(tc) respecting the establishment and conduct of residents’ councils;

(td) respecting the information, financial information and assistance a licensee shall give to a residents’ council and a residents’ council assistant.

Commence-
ment

17. This Act comes into force on the day it receives Royal Assent.

Short title

18. The short title of this Act is the *Nursing Homes Amendment Act, 1987*.