

1974 Bill 43

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Third Session, 17th Legislature, 23 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 43**

**The Nursing Homes Amendment Act, 1974**

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MR. YOUNG

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 43

1974

## THE NURSING HOMES AMENDMENT ACT, 1974

(Assented to \_\_\_\_\_, 1974)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. *The Nursing Homes Act is hereby amended.*
2. *Section 2 is amended*
  - (a) *as to subsection (1), clause (b), by striking out the words "has a contract with the Commission under section 10" and by substituting the words "has entered into a nursing home contract",*
  - (b) *as to subsection (1) by adding the following clause after clause (b):*
    - (b1) "district" means the area of
      - (i) a general hospital and nursing home district or a general and auxiliary hospital and nursing home district under *The Alberta Hospitals Act*, or
      - (ii) an auxiliary hospital and nursing home district or a nursing home district under this Act;
    - (b2) "district board" means
      - (i) a general hospital and nursing home district or a general and auxiliary hospital and nursing home district incorporated under *The Alberta Hospitals Act*, or
      - (ii) an auxiliary and nursing home district or a nursing home district incorporated under this Act;
  - (c) *as to subsection (1) by adding the following clauses after clause (e):*
    - (f) "nursing home contract" or "contract" means a contract entered into by the Commission pursuant to section 8, subsection (1) or its predecessors;

## **Explanatory Notes**

**1.** This Bill will amend chapter 264 of the Revised Statutes of Alberta 1970.

**2.** Section 2 (1) (b) presently reads:

2. (1) In this Act,

(b) "contract nursing home" means a nursing home the operator of which has a contract with the Commission under section 10;

- (g) “operator” means a person who has entered into a nursing home contract with the Commission;
  - (h) “resident of Alberta” means an individual who is entitled to be and remain in Canada and who ordinarily resides in Alberta.
- d) *by adding the following subsections after subsection (2):*

(3) In this Act,

- (a) “Alberta corporation” means a corporation incorporated by or pursuant to an Act of the Legislature of Alberta and which is controlled by residents of Alberta but does not include a non-profit religious corporation;
- (b) “corporate group” means two or more corporations that are associated corporations within the meaning of the *Income Tax Act* (Canada) as amended from time to time;
- (c) “equity share” means
  - (i) an issued and subscribed common share, or
  - (ii) an issued and subscribed preferred share carrying, at a material time under this Act, full or limited voting rights.

(4) For the purposes of subsection (3), clause (a), an Alberta corporation is controlled by residents of Alberta if the majority of the members of its board of directors, board of management or other governing body are residents of Alberta and if

- (a) in the case of a corporation without share capital, the majority of the members of the corporation are residents of Alberta, or
- (b) in the case of a corporation with share capital,
  - (i) at least 50 per cent of the equity shares of the corporation are beneficially owned by residents of Alberta, or
  - (ii) the corporation is a member of a corporate group and the *de facto* control of the corporate group is in the hands of residents of Alberta.



*3. Section 6.1 is struck out and the following is substituted:*

**6.1** The Commission may, subject to the regulations, make grants to district boards in respect of their capital costs and operating costs.

*4. Sections 7 to 11 are struck out and the following are substituted therefor:*

**7.** (1) After the making of an order pursuant to section 4 or 5, the district board shall, in accordance with the regulations, prepare a nursing home program for the district and furnish a copy of it to the Commission.

(2) Subject to this Act and the regulations, a district board has power to

- (a) construct, operate, maintain, manage and control one or more nursing homes in the district;
- (b) lease facilities in the district to a person who will operate them as a nursing home to serve residents of the district;
- (c) enter into an agreement with a person under which that person undertakes to manage on behalf of the district board a nursing home owned by the district board or to provide any managerial services in connection with the operation of that nursing home.

**8.** (1) Subject to this Act and the regulations, the Commission may enter into a contract with a person who operates or intends to operate a nursing home for the provision of nursing home care to eligible patients.

(2) A nursing home contract shall provide for the payment by the Commission to the operator of amounts prescribed by the regulations on a patient day basis or on any other basis prescribed by the Commission.

(3) The Commission shall not enter into a nursing home contract unless the other party to the contract is

- (a) a district board, or
- (b) an individual who is a resident of Alberta, or
- (c) a partnership consisting solely of residents of Alberta, or
- (d) an Alberta corporation, or
- (e) a non-profit religious corporation, or
- (f) the Government of Canada, a Minister of the Crown in right of Canada or an agent of the Government of Canada.

(4) An application for a nursing home contract shall be filed with the Commission and shall be accompanied by

**3. Section 6.1 presently reads:**

- 6.1 The Commission may, subject to the regulations, make grants to
- (a) general hospital and nursing home districts or general and auxiliary hospital and nursing home districts under The Alberta Hospitals Act, or
  - (b) auxiliary hospital and nursing home districts or nursing home districts under this Act,
- in respect of their capital costs and operating costs.

The section is rewritten to refer to district boards as the content of clauses (a) and (b) will be included in the proposed definition of "district board" in section 2 of this Bill.

**4. Sections 7 to 11 presently read:**

7. (1) After the making of an order pursuant to section 4 or 5, the board shall, in accordance with the regulations, develop a nursing home program for the district and submit it to the Commission for approval.

(2) On the request in writing of at least one-half of the members of a board the Commission may study a nursing home program that the board has under consideration for the district and if, after the study, it is of the opinion

- (a) that the implementation of the proposed program is being inordinately delayed, or
- (b) that, having regard to the size and population distribution of the district and the location of other medical facilities, the proposed program should be varied to better meet the needs and convenience of the residents of the district,

the Commission may give such directions to the board for the implementation of the nursing home program as it considers proper.

(3) In giving the directions, the Commission shall indicate where any nursing home is to be situated in the district and under whose ownership and administration it should be operated.

8. After approval of the program and subject to this Act and the regulations, a board has power to

- (a) construct, operate, maintain, manage and control one or more nursing homes in the district,
- (b) lease facilities in the district to a person who will operate them as a nursing home to serve residents of the district,
- (c) enter into an agreement with a person for the provision and operation by that person of a nursing home in the district to serve residents of the district, and
- (d) give its approval to any nursing home within the district that meets the requirements of the regulations, and forms part of the nursing home program of the district.

9. Where a board refuses or fails to approve a nursing home, the operator of the home may appeal to the Lieutenant Governor in Council who may recommend to the district board approval of a nursing home.

10. (1) The Commission may enter into a contract on the approval of the district board with the operator of an approved nursing home for the provision of nursing home care to eligible patients and for the payment to the home by the Commission of an amount on a patient day basis, as prescribed by the regulations.

(2) Repealed 1971, c. 45, s. 30.

11. (1) A contract with the Commission is automatically cancelled upon a change of ownership or control of a nursing home, unless the district board and the Commission give their approval of the change before the change is effected.

(2) The Commission may, upon 90 days' notice in writing, suspend or cancel a contract with the operator of a nursing home.

(3) The operator of a nursing home may, within 30 days of receiving a notice of suspension or cancellation of his contract, appeal to the Lieutenant Governor in Council who may, in his discretion,

- (a) confirm the suspension or cancellation of the contract, or
- (b) order that the contract be reinstated, either unconditionally or subject to such conditions as he may prescribe.

- (a) any plans and specifications required by the regulations, and
  - (b) any other information required by the Commission.
- (5) The Commission shall
- (a) hear and decide the application,
  - (b) give notice of the time and place of the hearing to
    - (i) each operator who operates a contract nursing home in the same district,
    - (ii) the district board of that district if it is not the operator of a contract nursing home, and
    - (iii) any other person that the Commission considers to have an interest in the outcome of the application,
  - (c) require the applicant to furnish to the persons referred to in clause (b) a copy of the application and of any plans or information accompanying it, and
  - (d) permit any person referred to in clause (b) to appear at the hearing and to make representations to the Commission regarding the application.

9. (1) Where an operator enters into an agreement for the sale of the land and buildings used for his nursing home, the operator's nursing home contract in respect of that nursing home automatically terminates on the effective date of the change of ownership under the agreement.

(2) Where an operator is the tenant under a lease of the facilities used for his nursing home and the lease is assigned by the operator, the operator's nursing home contract in respect of that nursing home automatically terminates on the effective date of the change of possession under the assignment.

(3) Subsections (1) and (2) apply whether or not the agreement or assignment also involves a change of ownership of equipment or supplies used in connection with the operation of the nursing home.

(4) Where an agreement under subsection (1) or an assignment under subsection (2) is entered into, the operator shall forthwith furnish a copy of the agreement or assignment to the Commission.

(5) Notwithstanding anything in section 11, the Commission may terminate a nursing home contract upon the giving of at least 90 days' notice of the termination to the operator.

(6) An operator may terminate a nursing home contract upon the giving of at least 90 days' notice of the termination to the Commission notwithstanding that the contract provides for termination by the operator on less than 90 days' notice.





(7) Nothing in this section precludes the termination of a nursing home contract by agreement between the Commission and the operator.

(8) No operator shall enter into or execute

- (a) a lease of any land or buildings to be used by him as tenant for the purposes of his nursing home, or
- (b) an agreement under which any person undertakes to manage the operator's nursing home on the operator's behalf or to provide any managerial services in connection with the operation of that nursing home, or
- (c) any agreement to amend or replace a lease or agreement referred to in clause (a) or (b),

except with the approval of the Commission.

**10.** (1) No agreement between an operator or other person and a district board for the sale to the district board of any land, buildings, fixtures, equipment or other assets to be used for the purposes of a nursing home is valid unless the sale is approved by the Commission.

(2) Subsection (1) does not apply to the sale to a district board of

- (a) any supplies required in the ordinary course of operating the nursing home, or
- (b) any kind of fixtures, equipment or other assets exempted from the application of this section by the regulations.

(3) Where an application is made for the approval of the Commission under subsection (1), the Commission shall

- (a) hear and decide the application,
- (b) give notice of the hearing to any other operator who operates a contract nursing home in the same district and to any other person specified by the Commission,
- (c) require the applicant to furnish to the persons referred to in clause (b) a copy of the application and of any information accompanying it, and
- (d) permit any person referred to in clause (b) to appear at the hearing and to make representations to the Commission regarding the application.

(4) The Commission shall refuse to give its approval under subsection (1) where it is satisfied that the selling price of the property sold is greater than the valuation of that property determined in accordance with the regulations.

(5) Subject to subsection (4), the Commission may give or refuse to give its approval under subsection (1).

(6) Where the Commission finds that an operator or former operator has been unsuccessful in his attempts to sell his nursing home business to a person who is eligible



under section 8, subsection (3) to enter into a nursing home contract, the Commission may direct the district board to purchase the assets used in connection with the operation of the nursing home at a price equal to the valuation of those assets determined in accordance with the regulations.

(7) Where any sale to which this section applies is made to a district board by an operator, no value shall be attributed to that operator's nursing home contract in determining the valuation of the property being sold.

**11.** (1) The Commission may, upon a complaint by any person appearing to have knowledge of the facts or upon its own motion, hold a hearing to determine whether or not any ground exists under subsection (3) for the making of an order under that subsection.

(2) The Commission shall

- (a) give notice of the time and place of the hearing and of the subject matter of the hearing to the operator concerned and the complainant, if any, and
- (b) permit any person referred to in clause (a) to appear at the hearing and to make representations to the Commission regarding the subject matter of the hearing.

(3) After a hearing under this section, the Commission may make an order cancelling the nursing home contract of the operator concerned, suspending the contract of that operator or prohibiting or restricting the admission of patients to that operator's contract nursing home after the effective date of the order, where the Commission is satisfied, on the basis of the evidence adduced at the hearing, that

- (a) the operator has failed to comply with section 9, subsection (8), or
- (b) a sale of land or buildings was made to a district board under section 10 without the approval of the Commission, or
- (c) an approval of the Commission given under section 9, subsection (8) or section 10 was obtained fraudulently by reason of a material misrepresentation made by or on behalf of the operator or the other party to the agreement, or
- (d) the operator was a resident of Alberta at the time his contract was entered into but has ceased to be a resident of Alberta, or
- (e) the operator was a partnership consisting of residents of Alberta at the time its contract was entered into but one or more of the partners have ceased to be residents of Alberta, or
- (f) the operator was an Alberta corporation at the time its contract was entered into, or became an Alberta



corporation after its contract was entered into, but has subsequently ceased to be an Alberta corporation, or

- (g) the operator has, without justification, neglected or refused to comply with a direction given by the Commission pursuant to section 13.1, or
- (h) in the case of an operator that is a corporation with share capital but which was not an Alberta corporation at the commencement of this section, the control of the corporation has, by reason of transfers or allotments of shares made after the commencement of this section, been transferred to a person or group of persons who are not within any of the categories of persons enumerated in section 8, subsection (3), or
- (i) the operator has contravened any other provision of this Act or the regulations, if the contravention, having regard to its nature and gravity, has, in the opinion of the Commission, prejudicially affected or is likely to prejudicially affect the well-being of the patients in the operator's contract nursing home.

(4) An order under subsection (3) suspending a contract or prohibiting or restricting the admission of patients to a contract nursing home may be of indefinite duration or for a stated period.

(5) The Commission shall furnish copies of the order to the operator concerned and the complainant, if any.

**11.1** (1) Where the Commission gives a notice of termination of a contract under section 9, subsection (5), the operator concerned may, within 30 days after being served with the notice, appeal the notice to the Minister.

(2) Where the Commission makes an order under section 11, subsection (3), the complainant or the operator concerned or any other person entitled to appear at the hearing may, within 30 days after being served with a copy of the order, appeal the order to the Minister.

(3) An appeal under this section shall be commenced by filing a notice of appeal with the Minister and the Commission.

(4) The commencement of an appeal under this section operates to suspend the notice or order appealed from until the Minister determines the appeal and makes an order under subsection (8).

(5) Where an appeal is commenced under this section, the Minister shall

- (a) appoint one or more persons as a board of review,
- (b) fix the rate of remuneration payable to the member or members of the board of review,



- (c) in the case of an appeal under subsection (1), direct the board of review to hold a hearing to review the Commission's notice under section 9, subsection (5) and to permit the operator concerned and the persons representing the Commission to appear before the board of review to make representations to the board regarding the subject matter of the hearing, and
  - (d) in the case of an appeal under subsection (2), direct the board of review to hold a hearing to review the Commission's order under subsection (3) and the grounds on which it was made and to permit each of the persons entitled to appear at the Commission's hearing under section 11 to also appear before the board of review and to make representations to the board regarding the subject matter of the board's hearing.
- (6) Upon concluding its hearing under subsection (5), clause (c) or (d), as the case may be, the board of review shall make a report to the Minister thereon which shall include its recommendation as to the appeal.
- (7) Where an appeal is taken under subsection (1), the Minister shall, upon receipt of the board of review's report under subsection (6) and without any further hearing, make an order either
- (a) confirming the Commission's notice under section 9, subsection (5) and, if he considers it fair and reasonable to do so, extending the time at which the termination of the contract is to be effective, or
  - (b) cancelling the notice.
- (8) Where an appeal is taken under subsection (2), the Minister shall, upon receipt of the board of review's report under subsection (6) and without any further hearing, make an order either
- (a) confirming the Commission's order under section 11, subsection (3), or
  - (b) directing the Commission to cancel its order and to reinstate the contract effective as of the date prescribed by the Minister, either unconditionally or subject to any condition prescribed by the Minister, or
  - (c) directing the Commission to replace or amend its order under section 11, subsection (3), effective as of the date prescribed by the Minister, or
  - (d) directing the Commission to revoke its order under section 11, subsection (3) and to replace it with a different order under that subsection, effective as of the effective date of the Commission's original order.

**11.2** The Commission has, with respect to hearings before it under this Act, the powers of a commissioner under *The Public Inquiries Act*.





*5. Section 13 is struck out and the following sections are substituted therefor:*

**13.** The Commission or any person authorized by it to do so may at all reasonable times

- (a) enter and inspect any land or buildings used for a contract nursing home, or
- (b) enter any premises where any books or records in connection with the operation of a contract nursing home are kept and examine and make copies of such books or records, or
- (c) require an operator to furnish any specified information in connection with the operation of his contract nursing home as soon as is reasonably possible.

**13.1** For the purposes of determining whether or not the operator of a contract nursing home is an Alberta corporation, the Commission may direct the operator to furnish to it, on an annual basis or at any other time,

- (a) any information regarding the names and places of residence of the members of its board of directors, board of management or other governing body, or
  - (b) any information regarding the names and places of residence of the members or shareholders of the corporation, or
  - (c) evidence as to whether any person registered as a shareholder is also the beneficial owner of the shares, or
  - (d) evidence as to the identity and place of residence of any person who is the beneficial owner of shares if he is not also the registered owner of the shares, or
  - (e) evidence that the operator is an Alberta corporation, or
  - (f) any information with respect to the corporate group of which the operator is a member or with respect to any other member of the corporate group,
- and may direct that any information or evidence be verified by statutory declaration or affidavit.

*6. Section 15 is amended by striking out subsection (2) and by substituting the following:*

(2) Notwithstanding section 11, the Commission may cancel a nursing home contract by notice to the operator if it is proved to the satisfaction of the Commission

- (a) that the operator has been convicted of an offence under subsection (1), and

**5. Section 13 presently reads:**

13. The Minister or any person authorized by him or a visiting team authorized by the Lieutenant Governor in Council may at all times enter any buildings and grounds of a contract nursing home and may examine the premises and any books and records kept in connection with the operation of the nursing home and request any other information they require and the operator of the nursing home shall provide all the information so required as soon as is reasonably possible.

Section 13 is rewritten so that it will extend the powers of inspection to premises other than those used for the contract nursing home itself.

**6. Section 15 presently reads:**

15. (1) A person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$500 and in default of payment to a term of imprisonment not exceeding 90 days.

(2) Where the operator of a contract nursing home is convicted under subsection (1), his contract is subject to immediate cancellation.

- (b) that the time for appealing the conviction has expired without an appeal having been taken or that all appeals from the conviction have been concluded and the conviction was upheld.

*7. Section 16 is amended by striking out clause (c) and by substituting the following:*

- (c) prescribing the plans and specifications that must accompany applications under section 8,
- (c1) conferring or imposing powers and duties on the Commission with respect to any matter pertaining to the operation of contract nursing homes, the care or well-being of patients in contract nursing homes or the administration of this Act,
- (c2) authorizing the Commission to hold hearings with respect to any matter pertaining to the operation of contract nursing homes,
- (c3) governing any matters pertaining to hearings held before the Commission pursuant to this Act or the regulations,
- (c4) governing the valuation of nursing home assets for the purposes of section 10,
- (c5) governing any matter pertaining to hearings held by a board of review pursuant to section 11.1,
- (c6) empowering the Commission to prohibit or restrict the admission of patients to a contract nursing home and prescribing the circumstances under which the power may be exercised,

*8. This Act comes into force on the day upon which it is assented to.*

**7. Section 16 (c) presently reads:**

- 16. The Lieutenant Governor in Council may make regulations**  
**(c) prescribing the terms and conditions upon which a district board**  
**may approve a nursing home,**