

2006 Bill 205

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Second Session, 26th Legislature, 55 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 205**

## **CONTINUING CARE STANDARDS ACT**

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MS PASTOOR

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 205

2006

### CONTINUING CARE STANDARDS ACT

(Assented to \_\_\_\_\_, 2006)

#### Preamble

WHEREAS the Auditor General's May 2005 report on seniors' care and programs concluded that almost one-third of long-term care facilities under review did not meet basic care standards;

WHEREAS persons in long-term care facilities and supportive living settings deserve to be treated with dignity and receive continuing care that meets or exceeds current health service standards;

WHEREAS these persons are among the most vulnerable members of society whose interests and opinions, and those of their families, are too often disregarded; and

WHEREAS there is a need for an independent officer of the Legislature to have an ongoing role in investigating and enforcing continuing care standards in Alberta;

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

#### Definitions

1 In this Act,

- (a) "Commissioner" means the Commissioner on Continuing Care appointed under section 2;
- (b) "long-term care facility" means a facility that provides medical or general care and includes

- (i) auxiliary hospitals, and
- (ii) nursing homes as defined in the *Nursing Homes Act*;
- (c) “Standing Committee” means the Standing Committee on Legislative Offices;
- (d) “supportive living setting” includes lodge accommodation as defined in the *Alberta Housing Act* and any other residential facility that provides medical or general care for residents.

#### **Appointment of Commissioner on Continuing Care**

**2(1)** The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint a Commissioner on Continuing Care to carry out the duties and functions set out in this Act.

**(2)** The Commissioner is an officer of the Legislature.

**(3)** The Commissioner may not be a Member of the Legislative Assembly.

#### **Continuing care standards**

**3(1)** Within 6 months of the coming into force of this Act, the Government must review, in conjunction with the Commissioner, the standards of care prescribed for long-term care facilities and supportive living settings.

**(2)** Where the review conducted under this section indicates that existing standards are no longer adequate, or that no standards are in place, the Government shall develop new standards for implementation.

**(3)** Subject to subsection (4), and within one year of the coming into force of this Act, the Government must implement any standards developed under this section.

**(4)** Prior to implementation, standards of care developed under this section must be

- (a) approved in writing by the Commissioner, and
- (b) made available to the public.

#### **Duties and powers**

**4(1)** The duties of the Commissioner are

- (a) to monitor compliance with continuing care standards;
  - (b) to receive, review and investigate complaints regarding the health, safety or well-being of persons receiving continuing care in long-term care facilities or supportive living settings;
  - (c) to review and investigate any decision or recommendation made, or any act done or omitted, relating to the administration of long-term care facilities or supportive living settings;
  - (d) where appropriate, to attempt to resolve the matters referred to in clauses (b) and (c);
  - (e) where appropriate, to conduct inquiries on any of the matters referred to in clauses (b) and (c); and
  - (f) to report on an annual basis to the Legislative Assembly on the following matters:
    - (i) the level of compliance with continuing care standards,
    - (ii) the adequacy of existing continuing care standards including any recommendations for change,
    - (iii) the rates for long-term care, and
    - (iv) any other matter relating to the provision of continuing care in long-term care facilities and supportive living settings.
- (2)** The Legislative Assembly or any of its committees may at any time refer a matter to the Commissioner for investigation and report.
- (3)** A Minister may at any time by order refer any matter to the Commissioner for investigation and report.
- (4)** The Commissioner may commence an investigation either on a complaint made by any person or on the Commissioner's own initiative.
- (5)** The powers and duties conferred on the Commissioner by this Act may be exercised notwithstanding any provision in any Act to the effect that
- (a) any decision, recommendation, act or omission mentioned in subsection (1) is final,

- (b) no appeal lies in respect of it, or
- (c) no proceeding or decision of the person or facility whose decision, recommendation, act or omission it is may be challenged, reviewed, quashed or called in question.

**(6)** The Commissioner may

- (a) conduct research on matters relating to continuing care, and
- (b) publish reports relating to the exercise of his or her functions under this Act, or to any particular case that has been investigated, that are in the public interest whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislative Assembly.

**Term of office**

**5(1)** Except as provided in subsection (2) and section 6, the Commissioner holds office for a term not exceeding 5 years.

**(2)** A person holding office as Commissioner continues to hold office after the expiry of that person's term of office until that person is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.

**(3)** A person is eligible for reappointment as Commissioner.

**Oath**

**6(1)** Before commencing the duties of office, the Commissioner must take an oath to faithfully and impartially perform the duties of the office and not, except as provided in this Act, divulge any information received by the office of the Commissioner on Continuing Care under this Act.

**(2)** The oath must be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.

**Resignation, removal or suspension**

**7(1)** The Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly in writing or, if there is no Speaker or the Speaker is absent from Alberta, by notifying the Clerk of the Legislative Assembly in writing.

**(2)** The Lieutenant Governor in Council must remove the Commissioner from office or suspend the Commissioner for cause or incapacity on the recommendation of the Legislative Assembly.

(3) If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the Commissioner for cause or incapacity on the recommendation of the Standing Committee.

#### **Vacancy in office**

**8(1)** The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Commissioner if

- (a) the office of Commissioner is or becomes vacant when the Legislative Assembly is not sitting,
- (b) the Commissioner is suspended when the Legislative Assembly is not sitting, or
- (c) the Commissioner is removed or suspended or the office of the Commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Assembly before the end of the session.

(2) The Lieutenant Governor in Council may appoint an acting Commissioner if the Commissioner is temporarily absent because of illness or for another reason.

(3) An acting Commissioner holds office until

- (a) a person is appointed under this Act,
- (b) the suspension of the Commissioner ends, or
- (c) the Commissioner returns to office after a temporary absence.

#### **Remuneration**

**9** Provided that funds are allocated by the Legislature for the purpose, the Commissioner shall receive

- (a) remuneration prescribed by the Standing Committee for his or her services, and
- (b) reasonable travelling and living expenses incurred while away from his or her ordinary place of residence in the course of fulfilling his or her duties as Commissioner.

#### **Office of the Commissioner**

**10** The Office of the Commissioner on Continuing Care is hereby established, consisting of the Commissioner and, provided that funds are allocated by the Legislature, those employees appointed

pursuant to the *Public Service Act* to assist the Commissioner in carrying out his or her duties and functions under this Act.

### **Complaint to Commissioner**

**11** Every complaint to the Commissioner must be made in writing.

### **Confidentiality**

**12(1)** Except where disclosure is authorized by this Act, the Commissioner and every employee of the office of the Commissioner shall maintain confidentiality in respect of all matters that come to their knowledge in the exercise of their functions.

**(2)** Notwithstanding subsection (1), the Commissioner may disclose in any report made under this Act any matters that in the Commissioner's opinion ought to be disclosed in order to establish grounds for the conclusions and recommendations in the report.

### **Refusal to investigate**

**13(1)** If in the course of an investigation of any complaint it appears to the Commissioner

- (a) that under the law or existing administrative practice there is an adequate remedy for the complainant, whether or not the complainant has availed himself or herself of it, or
- (b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

the Commissioner may in his or her discretion refuse to investigate the matter further.

**(2)** The Commissioner may in his or her discretion refuse to investigate or cease to investigate any complaint

- (a) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Commissioner, or
- (b) if in the Commissioner's opinion,
  - (i) the subject matter of the complaint is trivial,
  - (ii) the complaint is frivolous or vexatious or is not made in good faith, or

- (iii) the complainant has not a sufficient personal interest in the subject matter of the complaint.

(3) When the Commissioner decides not to investigate or to cease to investigate a complaint, the Commissioner must inform the complainant of that decision in writing and the Commissioner may, if he or she thinks fit, state the reason for that decision.

#### **Evidence at investigation**

14 The Commissioner may require any person who in the Commissioner's opinion is able to give any information relating to any matter being investigated by the Commissioner

- (a) to furnish the information to the Commissioner, and
- (b) to produce any document, paper or thing that in the Commissioner's opinion relates to the matter being investigated and that may be in the possession or under the control of that person.

#### **Entry of premises**

15 For the purposes of this Act, the Commissioner may, at any reasonable hour, enter a facility that is the subject matter of a complaint.

#### **Mediation may be authorized**

16 The Commissioner may authorize a mediator to investigate and try to settle any matter that is the subject of an investigation.

#### **Commissioner's report**

17(1) This section applies when, after making an investigation under this Act, the Commissioner is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

- (a) appears to have been contrary to law,
- (b) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,
- (c) was based wholly or partly on a mistake of law or fact, or
- (d) was wrong.



(2) If, when this section applies, the Commissioner is of the opinion that

- (a) the matter should be referred to the appropriate authority for further consideration,
- (b) the omission should be rectified,
- (c) the decision should be cancelled or varied,
- (d) any practice on which the decision, recommendation, act or omission was based should be altered,
- (e) any law on which the decision, recommendation, act or omission was based should be reconsidered,
- (f) reasons should have been given for the decision,
- (g) the matter should be reheard or reconsidered by the appropriate authority, or
- (h) any other steps should be taken,

the Commissioner must report that opinion and the reasons for it to the operator of the facility concerned, the appropriate Minister and any other official or agency that is involved in the matter, and may make any recommendations that he or she thinks fit, including a recommendation that the facility no longer be

- (a) licensed, where applicable,
- (b) eligible for grants or other forms of public funding, where applicable, or
- (c) considered for future contracts for the provision of continuing care.

(3) The Commissioner must inform the complainant of the results of the investigation at the earliest opportunity, at which time the results will also be made available to the public.

#### **Commissioner's orders**

**18(1)** If within a reasonable time after a report is made under section 17 no action is taken that seems to the Commissioner to be adequate and appropriate, the Commissioner may, by order, require that a duty imposed by this Act, or any other Act under which continuing care standards are prescribed, be performed.

(2) The Commissioner may specify any terms or conditions in an order made under this section.

(3) The Commissioner must give a copy of an order made under this section

- (a) to the person who made the complaint,
- (b) to the head of the facility concerned,
- (c) to any other person given a copy of the complaint, and
- (d) to the appropriate Minister.

(4) A copy of an order made by the Commissioner under this section may be filed with a clerk of the Court of Queen's Bench and, after filing, the order is enforceable as a judgment or order of that Court.

#### **No appeal**

19 An order made by the Commissioner under this Act is final.

#### **Duty to comply with orders**

20(1) Subject to subsection (2), not later than 50 days after being given a copy of an order of the Commissioner, the head of a facility concerned must comply with the order.

(2) The head of a facility must not take any steps to comply with a Commissioner's order until the period for bringing an application for judicial review under subsection (3) ends.

(3) An application for judicial review of a Commissioner's order must be made not later than 45 days after the person making the application is given a copy of the order.

(4) If an application for judicial review is made pursuant to subsection (3), the Commissioner's order is stayed until the application is dealt with by the Court.

(5) Despite subsection (3), the Court may, on application made either before or after the expiry of the period referred to in subsection (3), extend that period if it considers it appropriate to do so.

### **Proceedings privileged**

**21(1)** No proceedings lie against the Commissioner, or against a person acting for or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a power, duty or function under this Act.

**(2)** Neither the Commissioner nor any person holding an office or appointment under the Commissioner shall be called on to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to the Commissioner's or person's knowledge in the exercise of the Commissioner's or person's functions under this Act.

**(3)** Any thing said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

**(4)** For the purposes of the *Defamation Act*, any report made by the Commissioner under this Act is deemed to be privileged and a fair and accurate report on it in a newspaper or a broadcast is deemed to be privileged.

### **Offences and penalties**

**22(1)** Any person who

- (a) fails to comply with an order made by the Commissioner under section 18,
- (b) without lawful justification or excuse, wilfully obstructs, hinders or resists the Commissioner or any other person in the exercise of the Commissioner's or other person's powers under this Act,
- (c) without lawful justification or excuse, suspends, intimidates, coerces, imposes a financial or other penalty on or otherwise discriminates against a person because that person has, in good faith,
  - (i) made or attempted to make a complaint under this Act,
  - (ii) assisted another person in making or attempting to make a complaint under this Act, or

- (iii) given evidence or otherwise co-operated in an investigation under this Act,
- (d) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act, or
- (e) wilfully makes a false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of the Commissioner's or other person's powers under this Act,

is guilty of an offence.

**(2)** A person who commits an offence under this Act is liable

- (a) in the case of an individual, to a fine of not more than \$50 000, or
- (b) in the case of a corporation, to a fine of not more than \$500 000.

#### **Other laws**

**23** The provisions of this Act are in addition to the provisions of any other Act or any rule of law under which

- (a) any remedy or right of appeal or objection is provided for any person, or
- (b) any procedure is provided for the inquiry into or investigation of any matter,

and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.

#### **Coming into force**

**24** This Act comes into force on July 1, 2006.