Recent Media Spotlight Puts Long-Term Care on Centre Stage

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In recent months, extensive media coverage has been devoted to Ontario's long-term care homes.

The media attention follows steady progress made by the high-profile *Long-term Care Homes Public Inquiry* (the "Public Inquiry"). The Public Inquiry was established on August 1, 2017, by Order in Council, following Elizabeth Wettlaufer's conviction of offences she committed while working as a registered nurse in several different long-term care homes over seven years, including eight counts of first degree murder, four counts of attempted murder and two counts of aggravated assault.

The Public Inquiry has a broad mandate to inquire into the circumstances and factors behind the events perpetrated by Nurse Wettlaufer, including the effect, if any, of relevant policies, procedures, practices, accountability and oversight mechanisms. Presided by Madam Justice Gillese as commissioner, the Public Inquiry recently granted participant status to 50 parties, and public hearings are scheduled to be held starting in June 2018.

Already, some participants have released media statements that offer a preview into the positions they intend to take before the Public Inquiry. For example, in a statement released on January 18, the Registered Nurses' Association of Ontario expressed that they plan to use their participation to highlight systemic flaws "in the investigatory, disciplinary and reference check processes used by long-term care homes" and to advocate for mandatory disclosure of "termination notices and any issues related to patient safety to prospective employers during reference checks."

At the same time, NDP Home and Long-term Care critic Teresa Armstrong issued a statement calling for an acknowledgment of the "crisis facing Ontario's long-term care homes" and an "overhaul" of the "troubled system".

With heightened media coverage, public scrutiny and political attention, long-term care homes are well-advised to review their practices with respect to the management of complaints, adverse or critical incidents. Familiarity and compliance with the mandatory investigatory and reporting obligations under *Long-Term Care Homes Act* (the "LTCHA") is essential.

Incident Management Requirements under the LTCHA

Firstly, a long-term care home must investigate every reported, alleged, suspected or witnessed incident of: (1) resident abuse by anyone and; (2) resident neglect by staff. The results of the investigations, along with actions taken in response, must also be reported in accordance with the content requirements prescribed by the LTCHA Regulations. At the very least, a preliminary report must be submitted within 10 days.

Secondly, certain critical incidents must be reported immediately with as much detail as possible in the circumstances. Critical incidents requiring immediate reporting include: (1) an emergency, including fire, unplanned evacuation or intake of evacuees; (2) an unexpected or sudden death, including a death resulting from an accident or suicide; (3) a resident who is missing for three hours or more; (4) any missing resident who returns to the home with an injury or any adverse change in condition regardless of the length of time the resident was missing; (5) an outbreak of a reportable disease or communicable disease as defined in the *Health Protection and Promotion Act*; and (6) contamination of the drinking water supply.

Thirdly, other critical incidents must be reported no later than one business day after its occurrence: (1) a resident who is missing for less than three hours and who returns to the home with no injury or adverse change in condition; (2) an environmental hazard that affects the provision of care or the safety, security or well-being of one or more residents for a period greater than six hours, including a breakdown or failure of the security system, a breakdown of major equipment or a system in the home, a loss of essential services, or flooding; (3) a missing or unaccounted for controlled substance; (4) an incident that causes an injury to a resident for which the resident is taken to a hospital and that results in a significant change in the resident's health condition; and (5) a medication incident or adverse drug reaction in respect of which a resident is taken to hospital.

For all critical incidents, a final report meeting the content requirements prescribed by the LTCHA Regulations must be submitted within 10 days.

Depending on the specific factual circumstances of the incident, reporting obligations may also arise pursuant to statutes other than the LTCHA. For example, the *Regulated Health Professions Act* requires employers to report to a regulatory college where a regulated health care provider is terminated or resigns for reasons of professional misconduct, incompetence or incapacity. As well, reporting under the *Personal Health Information Protection Act* may be required in the event of a privacy breach.

Contact Us

The foregoing is not meant to be an exhaustive list of investigatory and reporting obligations that a long-term care home may face in the aftermath of an incident. BLG's experienced Health Law Group can provide crisis support and advice on these and other legal issues including the conduct and importance of the investigation process. Any inquiries can be made to your BLG lawyer, or a member of our Senior Living and Housing team.

By

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