

BACKGROUND BRIEF
IN SUPPORT OF
LETTER OF REQUEST FOR AUDIT OF
LONG TERM CARE FACILITIES IN ALBERTA

RESPECTFULLY SUBMITTED TO THE
AUDITOR GENERAL OF ALBERTA
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BY 12 CONCERNED CITIZNES

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BACKGROUND

In Alberta, facility-based long term care is provided primarily in nursing homes and auxiliary hospitals. ¹A number of beds in acute care hospitals, mental health hospitals and care centres are also designated for long-term care. ²Nursing homes (public, voluntary and private) operate under the authority of the *Nursing Homes Act* and the *Operation Regulation and General Regulation* (1985). ²Auxiliary hospitals are governed by the *Hospitals Act* and the *Hospitals Act Hospitalization Benefits Regulation*.

²Regional health authorities (RHAs) are responsible for the planning, delivery, managing and monitoring of long-term care services. A key responsibility of ²RHAs is to administer contracts with nursing home and auxiliary hospital operators in accordance with specific duties and powers set out in the above-mentioned legislation.

²The Minister of Health and Wellness is held ultimately responsible for the overall quality of health services in Alberta. ²The powers and duties of the Minister extend to the operation of nursing homes and approved hospitals. ²The Minister also sets provincial legislation, regulations and standards for these care settings; ensures that adequate resources are made available to health authorities and health service providers to enable them to perform their responsibilities; and assesses the overall performance of the health system.

Funding flows to nursing home and auxiliary hospital operators through two main sources: public money allocated by regional health authorities in the form of a ¹government per diem subsidy of about \$95 per resident for health services such as nursing care and rehabilitation therapy --- and accommodation fees paid by the resident and ³set in regulation by the Minister of Health and Wellness. ⁴ A Ministerial Order dated July 28, 2003 raised accommodation rates by 40 to 50 percent, effective August 1, 2003. Standard accommodation increased from \$28.22 to \$39.62; the semi-private rate went from \$29.93 to \$42.00; and private from \$32.60 to \$48.30. These substantial increases occurred without public consultation or input and without a government business plan identifying how the money will be spent to improve services and residents' quality of life. ⁵Documents presented to the Minister and Cabinet regarding the decision to raise these fees are not available for public review.

Other funding sources include but are not limited to AISH, Veterans Affairs, private insurance and extra unregulated charges (i.e. laundry service). At this point, Alberta taxpayers don't know how much money is flowing into the province's long-term care industry from all sources and how that money is spent. In other words, it appears the Alberta government is not required to provide regular, accessible reports so Albertans can determine if public funds are being spent with due regard for the best interests of the resident as well as economy and efficiency.

GOAL OF THIS INITIATIVE

A value-for-money audit of long-term care facilities in the province by the Auditor General of Alberta to ensure that public funds are being used prudently, effectively and as intended.

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- 1 Government of Alberta – June 17, 2003 News Release
 - 2 Alberta Health and Wellness - Achieving Accountability in Alberta's Health System , November 2001
 - 3 Nursing Homes Operation Regulation, Section 3
 - 4 Ministerial Order #87/2003
 - 5 August 7th 2003 communiqué to FAIRE from the Office of Health and Wellness

MOTIVATION FOR PROPOSING A VALUE-FOR-MONEY AUDIT OF LONG-TERM CARE FACILITIES ACTIVITY

Compared to 15 years ago, people living in long-term care facilities today are older, frailer, and beset by more complex health problems and needs. ⁶In Alberta, almost 70% of the near 14,000 residents assess as having high care requirements. In recent years, families of residents in care, health care unions and other stakeholders have identified a number of problem areas within the long-term care system that pose a serious threat to residents’ health, safety and welfare. These include, but are not limited to:

1. Legislation, Regulation, Standards

The *Nursing Homes Act and Regulations* have remained unchanged for more than 18 years. The standards in these pieces of legislation are seriously deficient, particularly in the areas of staffing and nursing care. For example:

a. Resident Care Hours - *NH-OR: s14(4) (6)*

Alberta has no minimum requirements for the number of nursing staff or staff-to-resident ratios. The province’s requirement of 1.9 hours of nursing care per resident per day ranks well below ⁷the experts’ recommended minimum of 4 hours of nursing care per day. It also translates into dangerously low staff-to-resident ratios as demonstrated by the following staffing levels in a Calgary facility:

<u>Days</u>	IRN for 41 residents	ILPN/PCA for 12 residents	RN = Registered Nurse LPN = Licensed Practical Nurse PCA = Personal Care
<u>Evenings</u>	(same as above)	IPCA/LPN for 15 residents	
<u>Nights</u>	IRN for 124 residents	IPCA for 28 residents	

Not only are these staffing levels unsafe, ⁷they are also 2 to 4 times lower than the experts’ recommended minimum standard. ^{8,9}Research in the United States and Australia shows that low numbers of staff are associated with poor quality care.

Alberta's seriously deficient staffing standards raise important questions. Are residents more likely to be physically and chemically restrained or develop contractures, incontinence and pressure sores due to insufficient staffing and nursing care? And does this not result in ¹⁰higher costs to the facility as well as to acute care hospitals that admit long-term care residents for treatment of illnesses and complications associated with these outcomes?

- b. Staff Qualifications:** The Ministry of Health and Wellness has yet to set:
 - i. standard qualifications for health care aides who provide most of the day-to-day personal and nursing care to residents
 - ii. standards stipulating the number of hours of training required for health care aides prior to employment. The 1986 OBRA legislation in the United States requires aides to have a minimum of 75 hours of training and to pass a competency test within 4 months of employment. ⁷In 2000, a panel of U.S. medical experts recommended doubling the training requirement to 150 hr.

6 Alberta Health and Wellness, 2000/2001 Resident Classification Data
 7 Experts Recommend Minimum Nurse Staffing Standards for Nursing Facilities in the United States, 2000
 8 Harrington C. Residential nursing facilities in the United States. *BMJ* 2001;323:507-10
 9 Braithwaite J. - The challenge of regulating care for older people in Australia. *BMJ* 2001;323:443-6
 10 Rantz M. - Does Good Quality Care in Nursing Homes Cost More or Less Than Poor Quality Care?

b. **Staff Qualifications:** (continued)

- iii. standards requiring directors of nursing and registered nursing staff to update their training and qualifications, specifically in the areas of gerontology
- iv. standards requiring each nursing home to incorporate into its staff mix a nurse practitioner with a specialty in the care of the elderly and disabled.

If staff are not properly qualified and adequately skilled to assess and care for the needs of residents, does this not increase the likelihood that serious problems will be overlooked until they become acute problems and require intensive, and more expensive treatment?

2. **Inspection and Enforcement**

The negative effects of low standards are exacerbated by the government's ineffectual system of inspection and enforcement. For example:

- a. Alberta does not require an annual inspection of each long-term care facility. ¹¹In 2000-2001, only 56 or 32% of the province's 176 long-term care facilities received an inspection.
- b. The Health Facilities Review Committee (Alberta's inspection body) ¹²does not have the mandate to:
 - i. inspect a facility in accordance with legislative standard
 - ii. determine whether a facility is in compliance with or in contravention of legislative requirements
 - iii. enforce standards
 - iv. sanction a facility for repeat violation of standards
 - v. address general nursing practice issues as they pertain to the professional conduct or competency of nurses
- c. There is no requirement for members of the Health Facilities Review Committee to have the knowledge, expertise, skills or training required to conduct a proper investigation.
- d. ¹³Routine inspection reports of Committee members are consistently void of any resident care issues

Alberta's weak inspection and enforcement system raises serious questions. Does this approach increase the likelihood that significant problems will be overlooked and that the health and safety of residents will be jeopardized? Does it decrease the likelihood that delinquent facilities will be held accountable?

11 FAIRE's analysis of inspection reports 2000 – 2001 accessed through Alberta Health Library Services

12 Health Facilities Review Committee 2002 correspondence to FAIRE

13 FAIRE's analysis of routine inspection reports (1994 though 1999 and 2000/2001)

3. Monitoring Quality of Care

RHAs and/or the Ministry of Health & Wellness are failing to:

- a. Detect and address serious problems in nursing practice and in the level and quality of care services provided by physicians, registered nurses and personal care aides;
- b. Address the weaknesses of the program (i.e. ensuring that staff mix and skills, and the level and quality of services and nursing care are meeting the assessed needs of each resident);
- c. Ensure effective and expert nursing management, leadership and supervision for evaluating and ensuring best practice, and improving outcomes of care.

If the Health and Wellness Ministry and RHAs do not have a clear picture of risk-related conditions in long-term care facilities, how can they act to address them? And why are there no mechanisms to ensure that best practice methods are adhered to? Since the Alberta government disburses public funds for use in long-term care facilities, why does it not insist that the money be spent as intended, namely, on the services, programs and care required to accommodate residents' individual needs and vulnerability?

4. Health, Safety and Protection of Residents

- a. More than 4,000 allegations of abuse and neglect have been reported under the *Protection for Persons In Care Act* (PPICA) since 1998. Although well-intentioned, this Act has proven inadequate to the task of identifying and preventing abuse and crimes committed against residents. Victims are not compensated and perpetrators are rarely prosecuted. The stated purpose of this Act is ¹⁴“*educative and preventive rather than being quasi-judicial and punitive,*” but there is little evidence it has improved the situation. The PPICA is currently undergoing a five-year review. The Alberta government restricted the composition of the review panel to 3 MLAs, 2 Ministry staff and 4 prominent facility owners/operators. The lack of consumer and stakeholder representation on the panel remains an issue of considerable concern.

^{15 16}Anecdotal and/or photographic accounts of mistreatment, premature deaths and possible criminal offences have also been filed by advocacy groups working to raise awareness and eradicate the abuse and neglect of residents in Alberta's long-term care facilities.

- b. Other relevant issues of concern:
 - i. possible inadequate recording and reporting of outbreaks of contagious infections, the number of people affected and the number of associated deaths; possible lack of effort to correlate the number of outbreaks per facility with sanitation practices, environmental cleanliness or resident hygiene;
 - ii. under-reporting and ineffective redress of complaints
 - iii. possible inadequacy of fire safety inspections and standards
 - iv. the lack of laws stipulating an owner or company must have a reputation above repute in order to receive a license to operate or manage a facility in this province

14 Alberta Community Development May 2003 letter to FAIRE

15 The Shame of Canada's Nursing Homes, FAIRE 2001

16 Creating Protections for Better Lives of Vulnerable Seniors in Care Today and in the Future, FAIRE 2003

4. Health, Safety and Protection of Residents (continued)

If there are no effective mechanisms to protect residents, does this not increase the likelihood of a continuum of serious injuries to residents and premature deaths? Will this not result in hospitalizations and higher liability insurance for the industry - added costs subsidized either directly or indirectly by taxpayers?

5. Sanctions

Various sanctions can be applied to long-term care facilities that contravene legislative requirements or cause harm to residents or pose a serious threat to their health and safety. These sanctions include suspension of admissions, revocation or suspension of a facility license, taking over the operation of a nursing home and prosecutions.

Despite the growing reports of possible violation of standards and the serious and potentially life-threatening problems in the delivery of care in this province, there is no indication that sanctions have been applied against delinquent facilities. Do residents, families of residents, as well as Alberta taxpayers have a right to know why this is?

6. Public Funding and Accountability

The apparent lack of government control over the significant amount of public funds flowing into Alberta's long-term care system is a cause for concern.¹⁷ While government subsidizes approximately 70% of the cost of a long-term care bed, there appear to be no rules specifying the amount of money to be spent on important areas such as services and programs, staffing and education, and direct bedside care. In addition, there seem to be no limits placed on: the financial returns that can be allocated to shareholders; salaries for chief executive officers; or spending on administrative and capital costs. Furthermore, Alberta has no mechanism for monitoring or addressing fraud – an issue that is only too common in the nursing home industry in the United States.

If the Alberta government is reluctant to intervene in areas that affect profit margins or to retain control over expenditures of owners/operators in the areas of staffing, skill mix and types of services to be provided, does this not increase the potential for the indiscriminate and inappropriate spending of public funds? And does this not leave vulnerable frail elderly people at risk of abuse, neglect and poor care?

SUMMARY

From the information provided in this single submission, it is easy to conclude that Albertans in long-term facilities are highly vulnerable to mistreatment, exploitation and poor care. We believe a value-for-money audit of Alberta's long-term care system would serve the interests of residents, their families, facility staff, Alberta taxpayers and those who might one day need residential long-term care. Furthermore, we believe the objectives of this initiative are consistent with the mission statement of the Office of the Auditor General of Alberta, namely "*to identify opportunities and propose solutions for the improved use of public resources, and to improve and add credibility to performance reporting, including financial reporting, to Albertans.*" It is our hope that the Auditor General of Alberta will look upon this submission as an opportunity to improve the province's long-term care program and, ultimately, the quality of life and quality of care of elderly and disabled citizens living in these care settings.

17 Government of Alberta News Release, November 2001