



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

December 21, 2010

Re: Ministry of Health and Long-Term Care's Monitoring of Long-Term Care Homes

I am enclosing the following documents relating to my investigation into the Ministry of Health and Long-Term Care's monitoring of long-term care homes in Ontario:

1. My reporting letter to the Ministry of Health and Long-Term Care, dated November 26, 2010;
2. The Ministry's response, dated December 3, 2010;
3. The Ministry's letter of December 18, 2009 to my Office and a Compliance Transformation Project Update, dated December 2009; and
4. The Ministry's letter to my Office of December 7, 2010 and its most recent Compliance Transformation Project Update, dated December 2, 2010.

I have tabled these documents today with the Speaker of the Legislative Assembly.

As a result of our investigation, we identified a number of serious concerns relating to the Ministry's monitoring of compliance in the long-term care sector. The Ministry committed to address these specific issues as it moves forward with its reform initiatives and undertook to provide me with status reports every six months.

Oversight of long-term care homes continues to be a work in progress, and I intend to monitor the Ministry's efforts in this area closely.

A handwritten signature in black ink, appearing to read 'André Marin', with a long horizontal flourish extending to the right.

André Marin
Ontario Ombudsman



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André Marin
OMBUDSMAN

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November 26, 2010

Mr. Rafi Saäd
Deputy Minister
Ministry of Health and Long-Term Care
Hepburn Block
80 Grosvenor Street
10th Floor
Toronto, Ontario
M7A 1R3

Dear Mr. Saäd:

Re: Investigation into the Ministry's monitoring of Long-Term Care Homes

I am writing to confirm the status of my investigation into the Ministry of Health and Long Term Care's monitoring of long-term care homes in the province.

After receiving over 100 complaints about the state of Ontario's long-term care homes, on July 15, 2008, our Office launched a systemic investigation into the Ministry's monitoring of long-term care homes, its effectiveness in ensuring homes meet government standards, and the extent to which the standards themselves detract from enforcement. Since that time, we have received over 450 complaints relating to long-term care, many specifically directed at the administration of the Ministry's compliance program.

During the course of our investigation, the Ministry was undergoing significant organizational transition to compliment the pending proclamation of new legislation governing standards and oversight in the long-term care sector. On July 1, 2010, the *Long-Term Care Homes Act, 2007* and its regulations came into force.

Our investigation was extensive, and complicated by the state of flux that existed as the Ministry prepared for implementation of a new regulatory structure. We reviewed over 20 bankers' boxes of materials and carried out 250 interviews with Ministry staff responsible for compliance, including senior management, complainants, long-term care home residents and their families, resident council members, staff and administrators, and stakeholders such as unions, regulated health profession associations, long-term care associations, and advocacy groups. We also conducted site visits at 11 long-term care homes.

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As a result of our investigation, we identified a number of serious concerns relating to the Ministry's compliance management program. These included problems with inconsistency in the interpretation and application of standards applied to long-term care homes, inefficiencies resulting from the sheer volume of standards applied to homes, inspection delays, follow-up investigations delays of up to 18 months, slow and insufficient response to public complaints, and inadequate and at times inaccurate public reporting on the compliance status of long-term care homes.

We brought these issues to the attention of Mr. Sapsford, the former Deputy Minister. Mr. Sapsford responded on behalf of the Ministry in a letter dated December 18, 2009. A copy of this letter is enclosed for your reference. At that time, the Ministry undertook to focus its attention on addressing the specific areas I had identified as it moves forward with its reform initiatives. The Ministry has committed to provide me with status reports every six months concerning the progress it is making in this area. The most recent status report was received from the Ministry on June 18, 2010. As the time for the next update report approaches, I believe it is an appropriate time to review our findings and the Ministry's response to date.

Inconsistency in Interpretation and Application of Standards

During our investigation, one of the main themes expressed by the public, long-term care home operators and the Ministry's own compliance staff, concerned the inconsistency in the interpretation and application of the standards to be met by long-term care homes. Our review of the Ministry's inspection reports also disclosed a considerable degree of variance in the interpretation and application of these standards.

Historically, the regional model for compliance services has resulted in substantial inconsistency amongst Service Area Offices in terms of orientation and training. We found that orientation periods ranged from two weeks to six months. The quality and quantity of training in key areas such as investigations also varied significantly. Many compliance staff expressed that they had not received sufficient investigative training to assist them in carrying out their role.

We found that different regional offices also fostered divergent compliance approaches. Some offices placed more emphasis on cultivating an "advisory" relationship with long-term care facilities, while others pursued an "enforcement" model. At times, this resulted in facilities with the same compliance issues receiving differential treatment. While one facility might be issued a report citing numerous "unmet" standards, another would simply be counseled with "observations and discussions."

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Sanctions available to the Ministry include license revocation, something that had very rarely been done, and ordering that a home cease admissions, which has been done more frequently in 2008 and 2009. The Ministry's "enforcement continuum" runs from routine inspection to enhanced inspection to enforcement and finally to probation. Our review of Ministry investigative reports as well as interviews with Ministry staff and stakeholders, indicated that there was significant variance in the application of the enforcement model, leading to different enforcement results with some homes spending prolonged periods at one enforcement level before enforcement was escalated.

We also found significant variation amongst compliance advisors in their classification of "unmet" standards, a source of considerable frustration for long-term care home operators. In some cases, advisors, in their desire not to overwhelm facilities with a shopping list of unmet standards, would "clump" or group their findings under one category or simply not issue all of the "unmets" identified. In other cases, advisors would proceed strictly 'by the book' and set out each individual unmet or "clump" a series of minor infractions, which would not on their own attract an "unmet" classification, together to generate an unmet standard report.

In some cases Ministry staff treated unmet standards relatively equally without sufficient weighting of the risks involved. As a result, serious concerns had not necessarily been flagged to ensure the appropriate follow up. A number of compliance advisors also expressed concern about the lack of clear interpretative guidance on how to reach enforcement decisions.

In addition, we found inconsistency amongst compliance staff in their handling of areas of non-compliance. Although the Ministry's practice is that when a particular standard has gone unmet three times a statutory citation must be issued, we found that not all staff observed this direction. This resulted in the same unmet standards being issued time and time again without escalation.

Inconsistency in the application and interpretation of standards can result in dangerous situations continuing unchecked. In 2008, there were two deaths at Leisureworld O'Connor Gate in Toronto. The Ministry's investigations subsequent to these fatalities brought to light the Ministry's own failure to identify a home with significant problems. It was clear that management turnover in the regional office, inadequate staff training and monitoring, gaps and disconnects in the compliance data, inconsistent identification of resident risks, and failure to escalate enforcement, all contributed to the inability of the Ministry to properly oversee this home. One of the deaths resulted from improper use of restraints. It is possible that more rigorous enforcement of the restraint standards might have assisted in this situation. There had been problems identified with the home's use of restraints during the 2006 and

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2007 annual inspections. In both cases, the issue had been identified not as a restraint issue, but under another category relating to failure of the home to follow its own policies. Later in 2007, another compliance advisor identified a third restraint problem. She informed our office that she had examined the computer records, but had not realized that there had been previous problems noted with the home's use of restraints. Even when this compliance advisor identified that there was a restraint issue, she failed to conduct a follow-up inspection to ensure that corrective action had been taken. Senior management noted that at the time there was no efficient way of cross-checking to flag potential clusters of seemingly minor issues that might be related to a key area such as restraints, and acknowledged that internal practices had not been followed in this case. It was also suggested that had the restraint issue been properly identified and escalated, more forceful measures might have been taken against the home.

The physical location of and access to Ministry files also contributed to compliance staff in some areas not being sufficiently briefed on a home before conducting an inspection. The Ministry's current electronic files that staff consult before their inspections, also contained incomplete information.

The fact that compliance staff must apply over 450 standards during inspections also factored into the inconsistency of compliance coding. Many staff advised that they struggle to properly classify the concerns they have identified.

Overwhelming Number of Standards

We heard from numerous long-term care home operators that there were simply too many standards applied by the Ministry in monitoring their operations. They complained that the standards were not properly rated, with trivial issues being considered on the same level as serious infractions, and that the standards were outdated, unclear, and not adequately communicated. Operators also suggested that patient outcome should be the critical consideration and that the Ministry's emphasis on documenting compliance diverted resources from patient care.

Some Ministry staff also expressed the view that the multitude of standards existing served to dilute the enforcement focus.

We also heard from home operators, stakeholders and compliance staff who expressed confusion and frustration about the duplication and/or overlap of inspection and enforcement activities conducted by Ministry compliance staff and municipal Public Health Units. Our office was informed that the Ministry was going to attempt to enter a Memoranda of

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Understanding with the Public Health Units to address their respective roles regarding compliance inspection and enforcement activities in long-term care homes to address inconsistent standards and enforcement, a better understanding of each agency's role and to share inspection findings.

Timeliness of Inspections

Routine inspections are required to be carried out annually on an unannounced and randomized basis. Unfortunately, all too often the Ministry loses the advantage of surprise when home operators are alerted to the fact that an inspection is likely to occur. Ministry records we reviewed showed that typically, because of a host of other priorities combined with limited staff resources, there is a year-end rush by compliance staff to finish all of their annual inspections. Under the circumstances, it is not too difficult for facility administrators to predict that an inspection is imminent and to prepare for it.

After an inspection has identified unmet standards, compliance staff are expected to conduct follow-up inspections to ensure that homes have met the objectives set out in their compliance plans. However, our investigation found that as a result of the large volume of work to be carried out, compliance staff tend to wait to check on outstanding unmet items until the next annual inspection. This often results in the situation going without any monitoring for up to 18 months at a stretch.

Delays are particularly problematic when it comes to referrals to and follow-ups by the specialty disciplines. After an inspection, the compliance advisor may make a referral to an environmental health or dietary advisor to come in and determine if compliance has been achieved in relation to an issued unmet standard, or to carry out a specialist inspection. Specialist advisors carry very heavy caseloads and work throughout the province, travelling extensively. We have heard of several homes that had not seen a specialist advisor in more than 15 years. In order to address concerns about consistency and address potential risk situations, all long-term care homes should be subject to specialty discipline inspection.

Compliance advisors carry an average of 12 homes on their caseloads compared to environmental health advisors with 90 and dietary advisors with 50. The Ministry had not established any criteria for when specialty disciplines are to be involved in the inspection nor any time frames for completing referral inspections. We were told that it could take two years or longer for a specialist to visit a facility after receiving a referral or for the purpose of conducting a follow-up. In a home with outstanding resident care issues, the quality of life for residents may be detrimentally affected by the Ministry's failure to ensure timely specialty follow up or inspection. From the point of view of home operators, an unmet standard may

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appear listed on the Ministry's website and/or on the annual inspection report posted in the home, well after the situation has been corrected because a specialist has not had an opportunity to view the facility and complete their assessment.

Compliance advisors must manage their cases based on priorities and are often unable to conduct follow-up inspections in a timely manner. Once again, this can lead to homes having outdated compliance information posted publicly. This is frustrating for home operators who have taken steps to comply with the requirements. It is problematic from an enforcement perspective, since it can lead to homes continuing to flout the standards without further censure.

Large compliance caseloads also lead to delays in the preparation of final inspection reports to homes as well as the public reporting of inspection findings.

Treatment of Complaints

While the Ministry does have a process in place for receiving complaints about long-term care homes from the public, and complaints are given priority over other inspections, the Ministry's investigative process is not particularly rigorous.

To begin with the first contact most individuals have with the Ministry is through a call centre, which is not equipped to provide any detailed information regarding long-term care issues. Some complainants as well as Ministry compliance staff expressed concern about the accuracy of information provided by Infoline/Action Line staff to individuals calling to report resident care concerns. We also learned that the Ministry routinely refers individuals who call with complaints back to the home that is the subject of the complaint. Many complainants have expressed fear about complaining directly to a home because of the risk of reprisal against them or their loved ones. Some of those who complained to our Office noted that as a result of making a complaint to a specific long-term care home they were threatened with being banned from the home and in one case a lawsuit was threatened.

The Ministry permits the submission of anonymous complaints from those concerned about retaliation from homes. However, many compliance advisors told us that this presents difficulty, as additional information is often required from complainants in order to properly investigate the matter and they have no way to contact complainants to advise them of the results of their investigations. In addition, complainants have no means of checking to determine what has been done based on their concerns.

We also found instances where complaint investigations were substantially delayed. Ministry policy requires that serious complaints be investigated within two working days and other



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complaints be investigated within 20 working days. A review of Ministry files revealed that while in some cases this timeline is met, in many cases it is not. Once an investigation is initiated, many complaint investigations consist of simply contacting the facility by phone to make inquiries. In addition, when compliance staff actually visit facilities to follow up on complaints, they generally rely on the facility's documents and information provided by the home's administrators to assess whether the complaint should be supported. There have been instances when witnesses have not been interviewed and no follow-up has been done to ensure that evidence relevant to the investigation was collected. The Ministry does not require compliance staff to actually interview those directly involved, and staff are not expected to independently verify the information provided by a home. Some compliance staff expressed concern during our investigation that they were not properly trained to carry out this type of investigation.

Many stakeholders we heard from raised concerns about the lack of transparency in the investigation process. At the conclusion of an investigation Ministry staff might inform a complainant that the investigation revealed no problems or that an unmet standard was identified. However, the Ministry does not formally report to complainants concerning the results of its complaint investigations in terms of the evidence examined or how it arrived at the investigation findings. We were advised that in 2006, the Ministry changed its process to allow residents, those with powers of attorney and substitute decision-makers, to obtain more information regarding investigative outcomes. Unfortunately, some staff still routinely direct individuals to request investigative information under the *Freedom of Information and Protection of Privacy Act*. In addition, the Ministry's draft Compliance Manual continues to instruct staff to tell complainants to go through *FIPPA* to request investigative details. In some cases, complainants may not have the appropriate status to access information under the relevant access provisions. However, the Ministry may not clearly communicate this at the outset, leading to unrealistic expectations.

Complainants also advised us that the Ministry's system of classifying complaint outcomes as "verified - unmet", "verified with no unmet", "unable to verify" and "not verified" is very confusing for them. Our investigation has found that even when problems are identified, they do not always result in unmet standards being issued. In addition, the Ministry only publicly posts its findings if it has verified a complaint *and* the compliance staff has issued an unmet standard. Cases where problem areas have been identified, but the compliance advisor has decided not to issue an unmet, remain off the public radar.

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Inadequate Public Reporting

In November 2004, the Ministry first began posting information on its website about home profiles, inspections conducted, unmet standards and citations. While the Ministry continues to post data to its website, it does not refresh the information in a timely fashion, leaving long-term care home operators as well as the public with outdated information about the compliance status of various homes. During our investigation, Ministry officials advised that there has been a delay in refreshing the Ministry site, and it had not been updated for over a year.

Aside from containing stale information, the website also periodically purged information about unmet standards, regardless of whether the problems identified have been corrected, unless the specific “unmet” has been reissued within the reporting cycle, an unlikely event given the delay in conducting follow-up inspections.

The website also did not contain the results of specialty inspections, unless these have been carried out as part of an annual inspection. The explanation given by Ministry officials for this omission is that it would be unfair to disclose this information since not all homes are equally subject to specialty review. This excuse is not particularly persuasive and runs directly counter to the principles of accountability and transparency that should inform any principled system of public reporting of regulatory infractions. Furthermore, as a result of the Ministry’s policy, serious issues discovered during specialty reviews remain shielded from public knowledge.

In addition, the website did not identify those cases where a complaint has been verified, but the compliance staff have chosen to discuss the failure to meet a particular standard with a home operator rather than to issue an “unmet” standard or have decided to issue the unmet as not being directly related to the complaint. It also did not identify “at risk” homes that have been placed in the Ministry’s compliance continuum, consisting of enhanced inspection, enforcement inspection or probation. Homes are placed in the compliance continuum if they demonstrate prevalent, recurring or continuing non-compliance with the Ministry’s requirements or there is a serious actual or potential threat or risk of harm to resident health, life safety or overall wellbeing.

Finally, stakeholders, and Ministry staff observed that the information as presented on the Ministry’s website was not easily understood by the general public, and was at times inaccurate. The terminology used by the Ministry in characterizing long-term care home conduct is not explained in any detail, and is confusing. We found instances of missing reference information for unmet criteria and the site itself is not easily navigated. The

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evidence supporting a particular unmet is also not listed, leaving the public in the dark as to why a facility was found to have contravened the standard. In addition, we also discovered instances where the data on the website was inaccurate when compared to the Ministry's actual investigative reports.

We concluded that the Ministry's website did not provide the public with ready access to comprehensive, clear, current and accurate compliance information about long-term care facilities. All that was available was a partial, incomplete and, at times, inaccurate snapshot of compliance. The Ministry's website paled in comparison to those of more progressive jurisdictions such as Florida and England that employ a user-friendly star rating system, which quickly identify homes with a history of regulatory deficiencies.

Reform Initiatives

During our investigation it became apparent that some of the measures that the Ministry had recently undertaken as well as the additional initiatives it intended to introduce, might go a considerable distance in addressing the problems we had identified.

The inconsistency that has historically characterized the Ministry's enforcement efforts in the long-term care field should be mitigated to a certain degree with the proclamation of the *Long-Term Care Homes Act, 2007*. The Act's designation of Ministry compliance staff as "inspectors" should assist in ensuring that compliance actions are focused on enforcement of standards rather than the provision of "advice" and also dispel confusion about the role and function of compliance staff.

The Act also requires inspectors to document all non-compliance they find at a home, hopefully putting a halt to the practice of "clumping" or not issuing unmet standards. It also expressly sets out the factors that are to be considered when determining the enforcement action to be taken: the severity and scope of the harm or risk of harm to residents and the licensee's past history of compliance.

However, the Regulations do not include the Ministry's decision making 'matrix,' which lists what actions are to be taken in a given situation, after taking into consideration the severity, scope and history of compliance factors. The Ministry has advised that it will be issuing interpretative guidelines to encourage consistency in the application of the decision-making "matrix," but the extent compliance staff will have discretion in individual cases in applying enforcement sanctions is still unclear.

The Ministry will need to concentrate considerable focus on training to ensure consistency in the enforcement process. We have been advised that the Ministry has already provided some

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staff training on the new regulatory requirements, and on conducting investigations, and has set aside up to 17 dedicated staff training days. At the same time, the Ministry has hired an Education Coordinator and has been actively developing a more comprehensive orientation program for all staff. It is apparent that additional staff training on the regulatory requirements and conducting investigations should be given priority.

In addition, the Ministry recently introduced a series of electronic tools that allow staff greater capacity to analyze data, and identify trends, which will hopefully improve the inspection process and decrease resident risk. These include:

- the Compliance SmartClient, a collaborative website that allows inspectors to view all historical inspection data on long-term care homes to assist in preparation for home visits and contains inspection tools that can be completed on-line for greater efficiency;
- the Resident Assessment Instrument – Minimum Data Set (RAI-MDS), which is a set of screening questions that focus on 16 key aspects of resident health, and which incorporates resident strengths, preferences and needs -all homes will eventually carry out assessments using this standard instrument, and both individual homes and Ministry inspectors using RAI-MDS will be able to identify problem areas rapidly;
- the Early Warning System, which helps compliance staff review and analyze a home's compliance history by focusing on key risk areas, and also identifies appropriate follow up action to be taken; and
- the Critical Incident System, which allows homes to securely report unusual occurrences such as deaths on line to Ministry compliance staff, allowing for quicker Ministry response.

In terms of the standards that long-term care homes will now be evaluated against, the new Act focuses on key high-risk areas of resident care. The standards to be applied, as evident from the new regulations, are more refined, focused and not as prescriptive. The new regulatory framework and technology should assist to ensure more consistency in the application of the standards by Ministry inspectors. They might also better balance the need for operators to document compliance with the need to consider patient outcomes. However, it is too early to assess what impact the new approach will have on resident welfare. It is also not clear how the Ministry will ensure consistency in the application of the standards by

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individual homes, given that the regulations allow for flexibility in how operators chose to meet the requirements.

The Act and regulations consolidate the requirements applying to the various types of long-term care facilities and also provide an expanded, clearer, consistent and more stringent enforcement path for inspectors to follow.

Under the new inspection scheme, compliance staff will have more discretion and the ability to act quickly to respond to items of non-compliance when they are identified. They also have a greater range of enforcement sanctions at their disposal.

The Ministry has also developed risk indicators, which are used to flag key areas of resident risk for Ministry staff when they look at the RAI – MDS data. This will be a key component in the inspection process, which is currently under development by the Ministry. However, there is no provincial strategy in place as of yet for monitoring the quality of the RAI-MDS data and ensuring that it is easily accessible to compliance advisors.

We were also advised that the Ministry is examining its staffing models to assess workload issues and whether a “team” approach to inspections involving inspectors from different disciplines working together or an even more specialized approach, would be most effective. The Ministry will also be measuring the success of its new information technology in streamlining inspections. We have also been advised that the Ministry hopes to address the issue of specialist referrals and follow-up inspection timelines through use of its Early Warning System, which will flag high-risk areas and assist in prioritizing follow-ups. It has also been mentioned that enforcement leads and corporate specialist consultants have been hired to act as policy leads and provide specialized assistance. Whatever model the Ministry adopts, it needs to ensure that there is an integrated and cohesive approach to conducting its inspections and enforcement activities.

While some of the anticipated changes may assist in relieving the work pressures on compliance staff, the Ministry must also factor in the staff time that may be required as a result of the new statutory appeals process for home operators to challenge inspection findings.

With respect to the complaint system, the new Act requires inspectors to undertake inspections immediately in certain circumstances. This should assist in ensuring that serious complaints are responded to quickly. The Ministry has also indicated that it will be redesigning the complaint and information sharing process. While the Ministry works through this process, it should consider the need for experienced complaint intake staff, and

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the importance of rigorous investigation of complaints, including independent verification of evidence obtained from long-term care homes. The Ministry should also listen to concerns raised by the public and work towards greater transparency in reporting the results of complaint investigations.

Ministry's Progress Report

On June 17, 2010, the Ministry sent its first progress report to my Office, including information on the planned activities for the next six months.

The Ministry indicated that it was continuing to adapt the US Quality Indicator Survey methodology to determine whether long-term care homes are in compliance. This process includes structured interviews with residents, family members and staff to obtain input about the quality of the care in a home and also a review of clinical care records. This initiative includes development of a Master Trainer program for inspectors and developing a computer application to support the annual inspection process. The Ministry anticipates that this will ensure a greater focus on outcomes and risks, which was noted as requiring improvement.

The Ministry has also developed 34 detailed inspection protocols that will guide inspectors in determining a home's compliance with the requirements of the new Act, when following up on complaints, critical incidents and previously cited instances of non-compliance as well as for annual inspections of homes. The Ministry explained that the use of these standardized validated inspection protocols will ensure the consistent application of standards by ministry staff and address one of my chief concerns with the compliance system. The Ministry noted that inspectors were in the process of completing the training required to ensure that they are ready to inspect against the requirements of the Act. The training consists of education on the new legislation, regulations, advanced inspection skills and the new policies and procedures and inspection protocols.

The Ministry suggested that the new Act would improve administrative fairness by providing the opportunity to Home licensees to request an appeal of orders made by inspectors and the Director. It noted that the policies, procedures and administrative structures for the appeals processes are in the final stages of completion.

The Ministry advised that it was conducting a province-wide orientation for Long-Term Care home staff, family councils and other stakeholders on the new Act and the compliance management system. It noted that this initiative is coupled with several information and training products that are being developed for the field. The Ministry suggested that together,


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these sessions and products would facilitate acceptance and ultimately better rates of compliance in the field.

The Ministry had previously acknowledged that additional effort would have to be made to provide the public with more comprehensive, current and meaningful information on homes' records of compliance and committed to refreshing its website to align it with the requirements of the new legislation and inspection processes. The website was refreshed June 30, 2010, and currently shows results from compliance inspections current to March 31, 2010. While the public reporting site content has been refreshed it is currently still in the old format. After we alerted the Ministry to a number of errors on the site, including a sanction listed against the wrong facility, the Ministry corrected the information and increased the scrutiny given to data before it is posted on the web.

I am guardedly optimistic that the proposed organizational reforms and new regulatory scheme will lead to more effective oversight by the Ministry of Ontario's long-term care homes, and ultimately, improvement in the living conditions and care experienced by long-term care home residents. However, this area continues to be a work-in-progress and I intend to monitor the Ministry's ongoing progress closely.

Given the recent legislative and organizational developments, and the continuing changes occurring as a result of reform in this area, as well as the Ministry's willingness to undertake improvements based on my concerns and to keep me apprised of its progress, I have decided not to issue a detailed report concerning my investigation. However, I do intend to table this letter, together with the Ministry's letter of December 18, 2009, with the Legislative Assembly in early December 2010, and make these documents available to the public. If you have any further comments you would like to make concerning this matter, please provide them in writing to my attention by 4:00 p.m. on December 3, 2010.

Yours truly,



André Marin
Ombudsman of Ontario

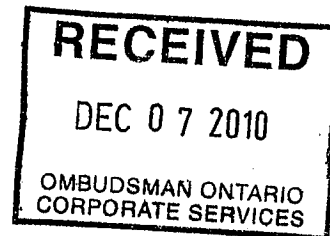
Encl. Letter from Mr. Ron Sapsford to the Ombudsman dated December 18, 2009.

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DEC 03 2010



Mr. André Marin
Ombudsman of Ontario
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Dear Mr. Marin:

Thank you for the opportunity to comment on your letter of November 26, 2010 regarding the status of your investigation into the ministry's monitoring of long-term care homes. I am very pleased that you have acknowledged our willingness to make improvements. I also believe that your letter fairly reflects our progress to date on this important file.

As mentioned in Deputy Minister Sapsford's letter of December 18, 2009, the Ministry continues to acknowledge the balanced and thoughtful approach you have taken in this complex investigation and is fully committed to implementing the most effective monitoring program possible.

We accept that an effective program plays a pivotal role in safeguarding the wellbeing of vulnerable residents in long-term care homes. We believe that we are making the investments necessary to ensure that Ontario remains a leading jurisdiction in this regard.

The foundation for the government's commitment to reforming the accountability of the long-term care home system is the *Long-Term Care Homes Act, 2007* (the Act). This new legislation and its regulations provide a clear indication of the ministry's move to a more resident focused and outcome oriented approach to regulating the sector. The Act and the regulations have been in force for six months and the ministry, in conjunction with its partners, is making real progress on its commitment to reform the long-term care home system.

2/...

Mr André Marin

My ministry has accepted and continues to act on the specific areas for improvement that have been identified. To this end, I would be pleased provide you with an update as to the Ministry's progress for December 2010 by Tuesday, December 7, for the purpose of tabling in the Legislature along with the then Deputy Minister Sapsford's letter of December 18, 2009.

My sincerest thanks to you and your office for your attention and guidance in helping the ministry meet its commitment on this critical issue.

Sincerely,



Saad Rafi
Deputy Minister

c. Honourable Deb Matthews, Minister of Health and Long-Term Care

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DEC 18 2009

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Dear Mr. Marin:

Thank you for your letter of December 4, 2009 regarding the ministry's monitoring of Long-Term Care Homes.

At the outset I want to express the ministry's gratitude for your letter's balanced and thoughtful approach to a very complex area of deep importance to the vulnerable residents we are committed to protecting. I also appreciated your acknowledgement of our cooperation with your investigation. I was especially encouraged by your expression of "guarded optimism" that the transformation initiatives upon which we have embarked will address the concerns you have identified. The ministry supports your request for periodic updates given the evolving nature of the program and continuing public interest in our progress.

The ministry accepts that some specific areas for improvement have been identified and agrees to make these the focus of future updates. We understand them to be generally as follows:

- Inconsistent application and interpretation of standards;
- A lack of risk oriented approach inspections and monitoring LTC homes;
- The need for more education and training of staff;
- The complaint management system—including intake, the conduct of investigations and the information ultimately provided to complainants;
- The need for consistency in consequences and follow-up in the event that deficiencies are identified in the course of an inspection;
- Timeliness of specialty and follow-up visits;
- Meaningful and timely public reporting on homes' record of compliance;
- The need to ensure that the ministry has adequate resources to discharge its responsibilities under the new Act and administer the new inspection regime effectively.

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CORPORATE SERVICES

Mr. André Marin

We are taking a systematic approach to addressing these issues and will continue to do so as quickly as the improvements are feasible to implement. For example, the program area was extensively re-organized in January 2008. Since that time there has been a single provincial team in place with the mandate to monitor potential risk to residents on an ongoing basis and intervene appropriately.

Going forward, the foundation for the government's commitment to reforming the accountability for the LTC Home system is the *Long-Term Care Homes Act (LTCHA)* that received Royal Assent in 2007. This year, proposed initial draft regulations required to implement the LTCHA were posted for public comment. The ministry is now considering the 316 submissions with 1,890 recommendations and comments received as it finalizes the regulations. As you have noted, the draft regulations provide clear indication our intention to move to a more outcome oriented, less prescriptive approach to regulating the sector. I can now advise you that, subject to the approval and discretion of the Lieutenant Governor we intend to provide the sector with a period of formal notice of when the regulations will come into effect.

We are equally committed to transforming compliance to ensure that we build a fully modernized, transparent and publicly accountable compliance management regime on the foundation provided by the *LTCHA*. We intend to move to field trials of the new inspection system and methodology in late spring which will contribute greatly to enabling homes to anticipate expectations of the new Act, while also demonstrating complete transparency. To our knowledge Ontario will be the first jurisdiction in Canada to have such complete transparency in its inspection regime.

On the issue of consistency in application of standards, it is important to note the *LTCHA* would, when proclaimed in force, require that all instances of non-compliance be noted in inspection reports. The ministry has developed, and will publish, a judgment matrix based on the factors set out in the regulations to be used by inspectors to ensure consistent and appropriate actions are taken and/or sanctions are implemented in the event non compliance is identified. The *LTCHA* would also further improve administrative fairness by providing the opportunity to LTC home operators to appeal orders made by inspectors or the Director Under the Act.

Highlights of recent progress:

The Ministry decided in early 2009 to formally adapt the US Quality Indicator Survey (QIS) methodology to determine whether homes are in compliance. This methodology is very focused on resident outcomes and was developed and scientifically validated over a fifteen year period following extensive research.

In October 2009 the ministry closed an RFP process for the purpose of selecting a third party with the expertise necessary to assist the ministry in adapting the QIS methodology to the Ontario context and implementing it as soon as possible. It is anticipated that this contract will be in place by January 2010.

Mr. André Marin

This contract marks important progress relevant to a number of the areas for improvement identified in your letter. With the addition of this resource, the ministry expects that it will be able to trace virtually all new more outcome oriented regulations through to specific inspection protocols embedded in the new inspection methodology. The ministry intends to make these protocols available to homes and the public. In addition, the ministry expects that within the next six to nine months it will have graduated its first batch of "master trainers" with advanced knowledge of the Ontario adaptation of QIS. The master trainers will have responsibility for leading the 20 days of orientation and training that each inspector will go through prior to inspecting under the *LTCHA*. Inspectors will be required to demonstrate proficiency and consistency in using the new inspection process before they can conduct inspections of record under the *LTCHA*.

The Ministry's public reporting website will be refreshed in within 90 – 120 days following completion of the necessary procurement processes. Work is underway to align the website with requirements of the new legislation and inspection processes. We also accept that additional effort must be made to provide the public with more comprehensive, current and meaningful information on homes' records of compliance. Further detail will be provided to the Ombudsman in a future update.

I have attached a more detailed progress report on our ongoing efforts to reform the inspection system and to address areas for improvement raised in your letter. I am confident that activities which are already underway at advanced planning stages will address substantially all of the deficiencies you identify in your letter.

You note in your letter that your office interviewed over 250 individuals and that numerous stakeholders have expressed an interest in your investigation. A number of respondents to the public consultation process for the regulations under the *LTCHA*, for example, recommended that your findings be taken into consideration prior to finalizing the regulations.

Again, my thanks to you and your office for your attention and guidance in helping the ministry meet its commitment on this critical issue.

Sincerely,



Ron Sapsford
Deputy Minister

c. Honourable D. Matthews, Minister of Health and Long-Term Care

Attachment

**COMPLIANCE TRANSFORMATION PROJECT
UPDATE
December 2009**

Accomplishments May – December 2009

ID	Subject	Milestone	Completion Date
Planning, Engagement and Staff Development			
1	CTP Planning, Management and Staff Engagement	Completed annual reviews and outstanding referrals	Nov. 1, 2009
		Implemented "Getting Ready" strategy for SAO managers and staff including input from staff, change management refresher training, outreach, communications, and education	Oct – Dec 2009
2	Education for Inspectors	Provided Tablets (laptops) training to staff	May 2009
		Staff review legislation at SAO team meetings	Ongoing
		2-day special in-service training on quality improvement delivered to PICB managers and CTP team by Ontario Health Quality Council.	Sept. 2009
		Compliance Forum: Inspections, Investigation and Enforcement (II&E) core curriculum for LTCH inspectors (4 modules): <ul style="list-style-type: none"> • Introduction to Law • Interviewing • Note taking • Evidence Compliance Transformation update Quality Indicator Survey methodology introduction	Jun. 2009
		II&E Training – next five modules <ul style="list-style-type: none"> • Regulatory Modernization Act 2007 • Conflict Avoidance • Communication and Culture • Code of Professionalism • Introduction to Risk Management <ul style="list-style-type: none"> • New Referral process and criteria for specialty disciplines rolled out 	Nov/Dec 2009
3	External Stakeholder Engagement	Compliance Transformation Advisory Group (CTAG) Facilitated dialogue sessions with: <ul style="list-style-type: none"> • Ontario Association of Residents' Councils • Family councils • LTC Homes • Labour Organizations 	Monthly or as agreed Jun. 2009 Sept 2009
Process Development			
1	Inspection Process Design	Commence Ontario adaptation of Quality Indicator Survey (QIS) methodology: <ul style="list-style-type: none"> • inspection protocols • complaints • follow-ups • critical incidents • critical judgement using matrix based on draft regulations • appeals 	Dec. 31, 2009
2	LTCHA Compliance inspection regulations	Consultation on initial draft completed – recommendations finalized.	Dec. 31, 2009

ID	Subject	Milestone	Completion Date
3	Ontario adaptation of QIS: to align with LTCHA	QIS feasibility test in 2 Ontario homes	June 2009
		Identification of QIS as appropriate of Ontario's needs.	July 2009
		RFP process to secure independent expertise to adapt QIS and deliver Inspector certification training to Ontario's needs.	Nov. 30, 2009
		Contract finalized / vendor team in place	January 2010
Technology			
1	IT Solutions	Roll-out of tablets to inspectors - access to forms, manuals and audit tools, capacity to generate electronic inspection reports	May 2009
		Internal IT approvals completed	Jun. 2009
		In-depth inspection protocols IT Solution User Acceptance Testing	Ongoing
3..	Resident Assessment Instrument – Minimum Data Set (RAI-MDS)	Data Access and Review Team (DART) reviewing data integrity.	In Place

COMPLIANCE TRANSFORMATION PROJECT
Planned January – December 2010

ID	Subject	Milestone	Projected Date
Planning, Engagement and Staff Development			
1	CTP Planning, Management and Staff Engagement	Detailed change management plan for management and staff for "Getting Ready" and new inspection process phases.	January 2010
		Continuous Quality Improvement (CQI)	CQI coordinator hired
	Define and adopt performance metrics for new inspections system	Q3 10/11	
	Inspection activity management and variance reports	Q3 10/11	
	Master trainer and certification program for Ontario Inspectors in place	Q3 10/11	
	SAO manager quality assurance audit tools	Q3 10/11	
2	Education for Inspectors	Compliance Forum (January 2010)	Jan. 2010
		<ul style="list-style-type: none"> • New inspection processes • QIS approach and methodology • Case studies • Technology demonstrations 	
3	External Stakeholder Engagement	Compliance Transformation Advisory Group (CTAG)	Ongoing
		Initiate QIS education and orientation program for:	Q1 10/11
		<ul style="list-style-type: none"> • Homes • Resident and Family Councils • Other stakeholders 	
		Confirm Ontario sample sizes for resident interviews	
		Establish Ontario thresholds for triggering stage 2 inspections	
New Inspection Process and Technology			
1	QIS Methodology-- Ontario Version	Stage 1 (Resident, family staff interviews and observations)	TBC (subject to vendor scheduling)
		<ul style="list-style-type: none"> • Field trials 	
		Stage 2 (In-depth inspection protocols if triggered at stage 1)	Q4 9/10
		<ul style="list-style-type: none"> • Phase 1: Critical incidents, complaints and follow ups— field trials 	
		Phase 2: Annual inspections	TBC (subject to vendor scheduling)
		<ul style="list-style-type: none"> • Ontario sampling method • Sensitivity thresholds confirmed • Alignment with LTCHA verified 	
2	Public Reporting Website	Business requirements for updating and redesigning website to align with t new legislation and consumer needs	TBC (contract dependency)
3	Integration of resident assessment data and inspection process	Ability to important common assessment data (MDS) into the QIS inspection process.	Q1 10/11
		RAI-MDS data accuracy review function—sustainability plan	Q1 10/11

Ministry of Health
and Long-Term Care

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Ministère de la Santé
et Soins de longue durée

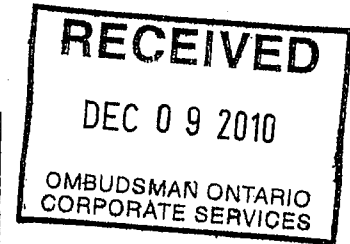
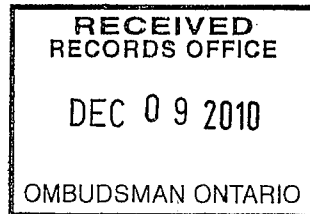
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Ontario

DEC 07 2010



Mr. André Marin
Ombudsman of Ontario
Bell Trinity Square
483 Bay Street, 10th Floor, South Tower
Toronto ON M5G 2C9

Dear Mr. Marin:

Further to my letter of Friday, December 3, I am pleased to enclose an update for December 2010 showing the ministry's progress with respect to the monitoring of Long-Term Care Homes. I would appreciate it if this document could be tabled in the Legislature along with letter of December 18, 2009 from the then Deputy Minister Ron Sapsford.

Once again, I would like to thank you and your office for your attention and guidance in helping the ministry meet its commitment on this critical issue. Should you require any further information with respect to this matter, please do not hesitate to contact me.

Sincerely,

Saäd Rafi
Deputy Minister

c. Honourable Deb Matthews, Minister of Health and Long-Term Care

Attachments

COMPLIANCE TRANSFORMATION PROJECT UPDATE

(As of December 2, 2010)

Accomplishments based on projected dates January 2010 – December 2010

ID	Objective	Milestone	Planned Date	Completion Date
Planning, Engagement and Staff Development				
1.	CTP Planning, Management and Staff Engagement	Detailed change management plan for management and staff for "Getting Ready" and the new inspection process	January 2010	February 2010
2.	Continuous Quality Improvement (CQI) And Education for Inspectors and Master Trainers	Compliance Forum for all inspectors and managers January 19-21 with focus on introduction to new inspection process and new LTCHA	January 2010	January 2010
		Continuous Quality Improvement Coordinator hired	February 2010	March 2010
		Define and adopt performance metrics for new inspections system	Q3 10/11	Stage 2 metrics defined Stage 1 under development
		Inspection activity management and variance reports	Q3 10/11	Requirements defined, enabling technology to roll out starting in Q1 2011/12
		Master trainer and certification program for Ontario Inspectors in place	Q3 10/11	October, 2010
		SAO manager quality assurance audit tools	Q3 10/11	Requirements defined, enabling technology to roll out starting in Q1 2011/12
3.	External Stakeholder Engagement	Compliance Transformation Advisory Group – meets monthly to provide advice and guidance – includes Family Council, residents council, LTC Home Association, Advocacy Centre for the Elderly and other key stakeholders	Monthly Meetings Ongoing	Ongoing
		Initiate QIS education and orientation program for: Homes, Resident and Family Councils and other stakeholders 10 provincial 'Roadshows' sessions across the province to provide an overview of the Act and regulation and new inspection process plus 5 webinars and 12 sessions with Family Council representatives (total 27 presentations) to over 3000 attendees	Q1 10/11	June 2010

ID	Subject	Milestone	Planned Date	Completion Date
		of LTC Home and Family Council representatives		
		Confirm Ontario sample sizes for mandatory resident interviews to be conducted at each annual home review.	Date not Stated	October 2010,
		Establish Ontario Thresholds for Triggering Stage 2 inspections	Date not stated	Testing in progress
4.	QIS Methodology- Ontario Version	<p>Field trials and feasibility testing conducted on Stage 1 inspection process (which includes resident, family and staff interviews and observations). Process involved testing at 8 LTC homes over a 4-week period between May 3 and June 11, 2010.</p> <p>Feasibility testing included:</p> <ul style="list-style-type: none"> • A Optimal Ontario sample size for mandatory resident interviews; • Sensitivity and specificity of thresholds; • Alignment with new Act; • Content analysis conducted to ensure interview questions are clear and understandable; • Feasibility of the process, does it work as intended 	TBC (subject to vendor scheduling)	June 2010
		<p>Stage 2 inspection process development:</p> <ul style="list-style-type: none"> • 34 inspection protocols drafted and tested through the feasibility testing process • Development of training materials for inspectors on Critical Incidents, Complaints and Follow up inspection processes (CCF) • Finalize policies and procedures 	Q4 09/10	June 2010
		<p>Phase 2: Annual inspections</p> <ul style="list-style-type: none"> • Ontario sampling method • Sensitivity thresholds confirmed • Alignment with LTCHA verified 	TBC (subject to vendor scheduling)	November, 2010
5.	Public Reporting Website	Business requirements for updating and redesigning website to align with the new legislation and consumer needs	TBC (Contract dependency)	See comments in "Planned" section

ID	Subject	Milestone	Planned Date	Completion Date
6.	Integration of resident assessment data (RAI-MDS) and inspection process	Data requirements identified and process developed to obtain the data to support the annual inspection process	Q1 10/11	June 2010
		RAI-MDS data accuracy review function – sustainability plan	Q1 10/11	Data accuracy model to be in place for Q1 2011/12 data submission

Other Accomplishments Jan 2010 – December 2010

ID	Subject	Milestone	Completion Date
Planning, Engagement and Staff Development			
1.	Continuous Quality Improvement (CQI) And Education for Inspectors and Master Trainers	Continuous Quality Improvement Coordinator established Quality Improvement Advisory Committee to meet quarterly	April 2010
		Education week for inspectors (May 31 - June 4) conducted which provided education modules on: <ul style="list-style-type: none"> • New inspection processes – policies and procedures; • Documentation, evidence gathering, interviewing and note taking training; • Case studies; • Overview of the legislation and regulations 	June 2010
		Three days of extensive training by Legal Services Branch on the new Legislation and Regulations (June 15-17) completed by inspectors and managers	June 2010
		Completed training for 'launch team' of 10 inspectors who were responsible for inspecting complaints and critical incidents (CCF), across the province, as of July 1, 2010. Team to be field ready to inspect against the Act and regulations	June 2010
		Completed training of all inspectors on new complaints, critical incidents and follow up (CCF) inspection process	August 2010

ID	Subject	Milestone	Completion Date
		Training materials developed for Information Technology training requirements for Complaints, Critical Incident and Follow up inspections	June 2010
		Training delivered to launch team on information Technology requirements and procedures	June 2010
		Training materials for IT supports to Resident Quality Inspection (RQI), the new annual inspection process developed.	September 2010
		RQI Master Trainer candidates (10) identified. Initial orientation to the new RQI conducted through 4 week feasibility testing process in 8 LTC homes.	June 2010
		RQI Master Trainer candidates (10) certified as RQI Inspectors through four week training program under the instruction of Nursing Home Quality Master Trainers	August 2010
		Training by Legal Services Branch on Inspection Reports and Order Writing completed by inspectors and managers	September 2010
		Lead Inspector identified in four of five SAOs to support review of inspection reports/orders and consistency in approach	September 2010
		Establishment of Long-term Care Quality Inspection Program continuous learning sessions (monthly). Initiated October 2010 and scheduled through 2011. Topics included: <ul style="list-style-type: none"> • Inspection Report Writing • Writing orders • Evidence-based reports • Inspector etiquette • Use of the Judgment Matrix 	October 2010 and Ongoing
		Presentations made to LTC Home Association Conventions, Elderlaw Conference, LTC Physicians Conference and others	October 2010
		Meetings held with Residents Council Association to obtain input and feedback	October 2010
		Launch team of inspectors trained and certified as RQI Inspectors to conduct annual inspections (RQI) using the new annual inspection process. Initial group of 5 Master Trainers certified	November 2010
		RQI certification training for remainder of inspectors	November 2010 to April 2011

ID	Subject	Milestone	Completion Date
		Involvement of LTC volunteer homes as training sites for feasibility and training of inspectors for CCF and RQI. Orientation to new inspection process given to each of these LTC homes in form of teleconference or home visit. Involved 39 homes from March to December 2010 and will involve 44 homes for January to June 2011 for a total of 83 LTC homes	December 2010; ongoing to June 2011
		Development of SAO level management reports for Stage 2: a) Inspection Results by Inspection Protocol b) Inspection Results by Inspector c) Actions and Orders by Service Area Office, d) Top 10 Act and Regulation references with findings of non-compliance, e) Top 10 Utilized Inspection Protocols and Findings	December 2010
		CQI improvement committee established to analyze intake process and make process and improvement recommendations	December 2010
		Duty inspector role reviewed and improved to more effectively manage intake, assessment, and tracking of critical incidents.	January 2011
		Additional training to inspectors and managers through webinars on following topics: • Information Technology - August, October, November 2010 • MDS-RAI for Complaints, Critical Incidents and Follow up (CCF) – September 2010 • Ergonomics sessions organized for all SAO staff to manage change regarding how inspections are conducted (both face-to-face and webinars)	December 2010

New Inspection Process and Technology			
1.	Complaint Intake Process	All Complaint inspections have a public report that can be shared with anyone	July 2010
2.	Complaint Intake Process	Residents or those entitled by law to receive personal health information can receive a copy of the licensee version of the inspection report	July 2010
3.	Appeals Process	Information provided on the Appeals and Director Review provisions of the Act in the body of an Order	August 2010
		Appeals database built to track requests for Director Review and Appeals	July 2010

4.	Policies and Procedures	Extensive training materials for Annual Inspection process(RQI) developed - revisions ongoing	October 2010*
		Draft policies and procedures developed – work underway to align policies and procedures between annual inspection and other types of inspections	November with completion by March 31, 2011
6.	Public Reporting Website	The Public Website refreshed for June 30, 2010 to show recent results from Compliance inspections for the period to March 31, 2010	June 2010
		Website being updated by December 2010 to show all inspections to June 30, 2010	December 2010

Planned Activities: January 2011 - June 2011

ID	Subject	Milestone	Completion Date
1.	CTP Planning, Management and Staff Engagement	Ongoing work with SAO staff teams to manage change and provide supports	Ongoing
2.	Continuous Quality Improvement (CQI) and Education	Monthly Continuous Learning sessions set up for all inspectors and Managers. Planned Topics include: Order writing, clarification of Act/regulation requirements, using the Judgment Matrix to support decision-making	Jan - June 2011
3.	External Stakeholder Engagement	Compliance Transformation Advisory Group meets monthly	Ongoing
		Webcast posted on "Understanding your Inspection Report and Orders"	January 2011
		Training on new annual inspection process (RQI) for LTC Home stakeholders	Spring 2011
4.	Complaint Intake Process	Organizational changes to enable a dedicated intake resource trained on effective complaint management	Spring 2011
5.	Public Reporting Website	A project manager is being procured to manage the project to design and implement the new reporting site to align with the new legislation and the consumer needs	Expected Q4 2010/11 (start)
6.	Staffing Model	Environmental Health Inspectors will be utilized to address critical environmental health issues identified	January 2011 and ongoing
		Dietary Inspectors will be trained as generalists to support all inspection types	January 2011 and ongoing
		Annual Inspections(RQI) will be completed by a team of inspectors (4 initially and 3 once transition has happened)	January/February 2011 - first inspection of record

ID	Subject	Milestone	Completion Date
7.	Policies and Procedures	Policies for Complaints, Critical incidents and Follow ups (CCF) are being aligned with the new annual inspection process	March 2011
		Inspector handbook and SAO handbook under development	March 2011
		Finalize and align policies and procedures to incorporate annual inspection process(RQI) principles into CCF process	March 2011
		Orientation manual will be developed once policies and procedures are finalized	Fall 2011

List of acronyms used in this document:

CCF: Complaint, Critical Incident Follow-up (inspections which will specific protocols)

CQI: Continuous Quality Improvement

CTP: Compliance Transformation Project (general project name for organizational change underway within MOHLTC inspection area)

IP: Inspection Protocol

SAO: Service Area Office (of the Ministry of Health and Long-Term Care)

MDS-RAI: Name for methodology used by homes to assess resident needs and preferences

RQI: Resident Quality Inspection (interview which takes place at Stage 1 of Annual Inspection)