

MEETING MATERIAL

Cliff #: 1069354

PREPARED FOR: Honourable Terry Lake, Minister of Health

TITLE: Minister of Health meeting with Azim Jamal of Retirement Concepts

MEETING REQUEST/ISSUE: Sale of Retirement Concepts

SHOULD MINISTRY STAFF ATTEND THIS MEETING: Doug Hughes, Assistant Deputy Minister, Health Services Policy Division; Sharon Stewart, Executive Director, Seniors Services

BACKGROUND:

Retirement Concepts (RC) owns and operates independent living, assisted living and complex care facilities in British Columbia (BC), Alberta and Quebec. In BC, 24 sites are operated in all regional health authorities (HAs), except Northern Health. 23 sites are licensed/registered under the *Community Care and Assisted Living Act* (CCALA); one site, Dufferin Care Centre in Coquitlam, is licensed under the *Hospital Act*.

On July 27, 2016, the Ministry of Health (the Ministry) facilitated a conference call between Azim Jamal (AJ), President and CEO of RC and the four HAs; RC shared, in confidence, that they were selling all, but two sites (Qualicum Gardens and Terraces on 7th) to an international investor. RC noted there would be no change to the day to day operations; the new owner will contract with RC to remain as the administrator for five years, with an option to renew for an additional five years. AJ indicated on the call that he was aware that the sale would require all facilities to be re-licensed/re-registered. The HAs agreed to a coordinated approach to information gathering, where possible.

On September 7th, AJ contacted the Ministry requesting that it facilitate a conference call with HA Medical Health Officers (MHO). For purposes of licensing, the MHOs are considered independent Statutory Decision Makers under the legislation and the Ministry cannot be seen to be interfering in their decision making process.

On September 13th, the Ministry held a conference call with the HA MHOs to understand how they would proceed with the new licensing request. The MHOs indicated that, where feasible, they would coordinate the approach for information required for re-licensing. The MHO noted that they were arranging for a joint call with AJ early the following week.

On September 23rd, AJ contacted the Ministry and raised concerns regarding recent changes to the Residential Care Regulations that added the need to provide 120 days notification to residents/their families, as well as to the MHO. Concerns included implications to business operations and the lack of industry consultation. AJ indicated that he had requested a shorter notification period for residents and families from the MHOs, but had not yet heard their decision. The MHOs later denied the request and RC was providing residents, as well as staff, notification of the sale (see Appendix A and B).

The fundamental purpose of the CCALA is to ensure that operators of licensed community care facilities “operate the community care facility in a manner that will promote the health, safety and dignity of persons in care, and...the rights of those persons in care.” (Section 7, CCALA). In considering any amendments, government must always consider the best interests of persons in care as well as their health and safety.

Prior to these specific amendments being made, if an operator wished to give less than 120 days’ notice of a change in ownership, they could apply to the MHO for an exemption to these requirements. The person requesting the exemption must demonstrate to the MHO that they have consulted with persons affected by the decision, and the MHO then must take the views of those persons (typically persons in care/family/resident council) into consideration prior to making their decision. Any decision to approve an exemption request could be appealed to the Community Care and Assisted Living Appeal Board.

The changes recently made to the Residential Care Regulation were in response to a number of Ombudsperson’s recommendations to improve the quality of care for seniors in care and their families. Recommendation 171 asked that the Ministry take the necessary steps to amend the Residential Care Regulation to require facility operators to notify residents, families and staff promptly of a decision to close, reduce, expand or substantially change the operations at their facility, or to transfer residents from their facility because of funding decisions.

The purpose of the recent regulatory changes is to promote transparency, as well as to ensure that persons in care and their families are treated in an administratively fair manner. The 120 days’ notice gives protection to residents and their families, allowing them time to consider how the pending sale may affect them and allows them time to make any decisions they need to make about their accommodation.

Broader, industry consultation did not occur; however, as part of the Ministry’s process to respond to the Ombudsperson’s recommendations, staff did discuss the proposed changes with the Home and Community Care Council and industry associations (note: this would have occurred prior to Daniel Fontaine joining the BC Care Providers Association). Impacts to operations were raised, but needed to be considered against the protection of residents and their families (also large scale sales, such as RC, are not typical). The BC Care Providers Association did enquire, on behalf of a member, about the recent regulatory change. The Ministry responded (see Appendix C) and there have been no further inquiries.

FINANCIAL IMPLICATIONS:

RC will likely raise concerns that the 120 days notification period will have financial implications to industry (e.g. impacts on bargaining, staff turnover).

ADVICE:

It is likely that AJ will raise a concern that given the administration of the day to day business is not changing; the MHOs have incorrectly interpreted the regulation. The Ministry should commit to doing a review once the process has completed, including working with the MHOs to review the need to set principles to identify if/when the 120 day notice to families could be shortened.

Changes to ownership and/or operations can have significant impact to residents and staff. In this instance, although there are processes to ensure there are no immediate changes to the operations, there is likely to be significant attention given to the fact the sale is to foreign investors.

In 2012 the Office of the Ombudsperson released 2 reports (see Appendix D). Report 40 – Closing of Cowichan Lodge found that VIHA did not properly inform families and persons in care of the proposed closure of the lodge, and did not apply for an exemption to the Medical Health Officer until very late in the day. There was then the perception when they did apply that the MHO was pressured in his decision making. Report 33 - Fraser Health Authority's Transfer of Seniors from Temporarily Funded Residential Care Beds. The Ombudsperson found that the FHA acted unfairly in deciding to move the residents out of temporarily funded beds in light of its prior written commitment. Two of the seven recommendations included:

- Provide at least 60 days' notice to residents and families of decisions to cease funding beds
- Take action to ensure operators are in compliance with the requirement to provide notice of a decision to close or substantially change a residential care facility.

JOINT MINISTER MEETING: N

IF SO, CAN THIS MATERIAL BE SHARED: N

Program Area: HSD

Date: October 25, 2016

Memo

To: Our Residents and their respective Representatives

From: Retirement Concepts Seniors Services Ltd.

Date: October 6, 2016

Re: Notice of Transaction involving Retirement Concepts and the senior's facility

We are pleased to advise that Retirement Concepts intends to enter into a partnership arrangement with Cedar Tree Investment Canada Inc. in connection with a number of our seniors' communities, including [Guildford Seniors Village]. We are very excited about this new partnership as it will serve to further strengthen the business and enhance our ability to develop innovative programs to meet the changing needs of seniors in Canada.

Subject to receipt of all necessary regulatory approvals, we intend to complete the transaction in early February 2017. Following completion of the transaction, Retirement Concepts will continue to manage the day-to-day operations of your seniors' community, such that there will be no change to the quality of care provided to our residents or to our policies, procedures and other operating standards. There will also be no change to our staff and leadership team, both at the community and corporate level, other than in the normal course of business.

As Retirement Concepts will continue to operate and manage your seniors' community, please rest assured that there will be no impact on the level and quality of care that you are accustomed to receiving.

Should you have any questions or concerns, please do not hesitate to contact _____, Regional Director of Operations at _____ or _____@retirementconcepts.com.

Sincerely yours,

Azim Jamal
President

Memo

To: Our Staff

From: Retirement Concepts Seniors Services Ltd.

Date: October 5, 2016

Re: Notice of Transaction involving Retirement Concepts and the senior's facility

Dear Staff,

We are pleased to advise that Retirement Concepts intends to enter into a partnership arrangement with Cedar Tree Investment Canada Inc. in connection with all of our seniors' communities, other than Qualicum Gardens and Terraces on 7th. We are very excited about this new partnership as it will serve to further strengthen the business and enhance our ability to develop innovative programs to meet the changing needs of seniors in Canada.

Subject to receipt of all necessary regulatory approvals, we intend to complete the transaction in early February 2017. Following completion of the transaction, Retirement Concepts will continue to manage the day-to-day operations of all of our seniors' communities, such that there will be no change to staffing plans, the quality of care provided to our residents or to our policies, procedures and other operating standards.

To be clear, there will be no change to our staff and leadership team, both at the community and corporate level, other than in the normal course of business.

Should you have any questions or concerns, please do not hesitate to speak with your Regional Director of Operations.

Sincerely yours,

Azim Jamal
President

From: Stewart, Sharon A HLTH:EX
Sent: Wednesday, October 5, 2016 10:14 AM
To: 'Mike Klassen'
Cc: Daniel Fontaine; Hughes, Doug J HLTH:EX
Subject: RE: Residential Care Regulations

Hi Mike

The requirement of 120 days notice to the Medical Health Officer has been in the regulations since the mid-1990's, if not longer. What was added was the need to also include notification of family/contact person in the 120 days' notice. The fundamental purpose of the Community Care and Assisted Living Act is to ensure that operators of licensed community care facilities "operate the community care facility in a manner that will promote the health, safety and dignity of persons in care, and...the rights of those persons in care." (Section 7, CCALA). In considering any amendments, government must always consider the best interests of persons in care as well as their health and safety.

The changes recently made to the Residential Care Regulation were in response to a number of Ombudsperson's recommendations to improve the quality of care for seniors in care and their families. Recommendation 171 asked that the Ministry of Health take the necessary steps to amend the Residential Care Regulation to require facility operators to notify residents, families and staff promptly of a decision to:

- close, reduce, expand or substantially change the operations at their facility
- transfer residents from their facility because of funding decisions.

The purpose of the recent regulatory changes is to promote transparency, as well as to ensure that persons in care and their families are treated in an administratively fair manner. The 120 days' notice gives protection to residents and their families, allowing them time to consider how the pending sale may affect them, and allows them time to make any decisions they need to make about their accommodation.

In regards to the consultation process, the legislative and regulatory development process is at all times subject to the rules of Cabinet confidentiality, whereby details of proposed legislation and regulation are protected until such time as they are introduced as a bill by government in the Legislative Assembly (in the case of legislation), or considered and approved by Cabinet (in the case of regulations and Orders in Council). It is not necessarily the case that policy concepts or proposals on which feedback is sought will ultimately be adopted and enacted by government. At times, policy proposals are revised in response to consultations, and it is often the case that some elements of a proposal or policy will not be the subject of public consultation.

I can advise that as part of the Ministry's process to respond to the Ombudspersons'

recommendations, staff did discuss the proposed changes with the Home and Community Care Council and stakeholders, although this may have been prior to Daniel Fontaine joining the BC Care Providers Association (the actual drafting took some time). I understand that impacts to operations were raised, but needed to be considered against the protection of residents and their families.

With these changes to the regulations, the requirement of providing administrative fairness to those affected by a decision (persons in care/families) has been codified, and made explicit, as noted, on the recommendation of the Ombudsperson in her investigations. The same provisions apply for notification and the same consultation process is needed if an operator requests an exemption to the Medical Health Officer to waive the 120 days' notice.

Thanks

Sharon

From: Mike Klassen [mailto:mklassen@bccare.ca]
Sent: Tuesday, October 4, 2016 3:09 PM
To: Stewart, Sharon A HLTH:EX
Cc: Daniel Fontaine
Subject: Re: Residential Care Regulations

Hi Sharon. Good chatting with you last week, and ^{s.22}

I was wondering if you had any insights to share on this earlier question below re: the 120 days' notice of sale now in the RC regulations. We are getting questions from our membership on it and would like to update them.

Cheers,

Mike

From: Mike Klassen <mklassen@bccare.ca>
Date: Wednesday, September 21, 2016 at 1:05 PM
To: "Stewart, Sharon A HLTH:EX" <Sharon.Stewart@gov.bc.ca>
Cc: Daniel Fontaine <dfontaine@bccare.ca>
Subject: Residential Care Regulations

Hi Sharon,

I'm pleased to have met you yesterday and^{s.22}

Daniel asked me to

inquire about some recent changes to the Residential Care Regulations, in particular section 9

http://www.bclaws.ca/Recon/document/ID/freeside/96_2009#section9, the provision to provide 120 days' notice before the sale of a community care facility.

For our information, can you help us to know if there is any flexibility built into these requirements, and when the changes came into effect? Also, are you aware if there was any consultation with anyone in the community care sector before making the changes, and if so which companies?

Thanks. I look forward to the follow up.

Kind regards.

--

Mike Klassen

VP, Communications & Stakeholder Relations

BC Care Providers Association

738-4710 Kingsway

Burnaby, BC, V5H4M2

w 604-736-4233 ext 231

m 604-377-5499

www.bccare.ca

@bccareproviders

"Improving Seniors Care...Together"

Appendix D

On Short Notice: An Investigation of Vancouver Island Health Authority's Process for Closing Cowichan Lodge¹

On February 14, 2012 the Ombudsperson released Public Report No. 48 *On Short Notice: An Investigation of Vancouver Island Health Authority's Process for Closing Cowichan Lodge*. The report was the result of 46 complaints from people in the Cowichan area who were concerned about and directly affected by Vancouver Island Health Authority's (VIHA) announced closure of a long established seniors' residential care facility in Duncan.

The investigation focused on the following issues:

- Informing residents and family members of the decision to close Cowichan Lodge
- Notifying staff of the decision to close Cowichan Lodge
- The process followed in requesting and granting an exemption to the 12 month notice requirement

The Ombudsperson made six findings and six recommendations. Key recommendations include:

- Developing a publicly available policy that sets out the process to follow when closing a facility (Recommendation 1)
- Considering all relevant factors including employment opportunities and recruitment needs at other facilities that residents might transfer to and where staff might wish to apply when determining a schedule to announce a facility's closure (Recommendation 2)
- Fulfilling the legal obligation to provide 12 month's notice or seek an exemption to regulatory notice periods when planning a facility closure (Recommendation 3(b))
- Establishing a process to ensure an alternate decision maker, not directly affiliated with VIHA, considers VIHA's request for exemption to the 12 month notice requirement (Recommendation 3(c))

Update on Recommendations

VIHA accepted and agreed to implement five of the six recommendations. VIHA indicated it could not accept recommendation 3(c) as it believes it is statutorily bound to refer requests for exemption to the 12 month notice of closure of a residential care facility to VIHA medical health officers.

¹ <https://bcombudsperson.ca/documents/short-notice-investigation-vancouver-island-health-authoritys-process-closing-cowichan>

Honouring Commitments: An Investigation of Fraser Health Authority's Transfer of Seniors from Temporarily Funded Residential Care Beds²

On February 14, 2012 the Ombudsperson released Special Report No. 33 *Honouring Commitments: An Investigation of Fraser Health Authority's Transfer of Seniors from Temporarily Funded Residential Care Beds*. This investigation was the result of complaints received by the Ombudsperson after the Fraser Health Authority (FHA) reversed an earlier written commitment made to seniors at a residential care facility in Surrey.

People complained to the Ombudsperson about the actions taken by FHA beginning in 2008, when FHA made a written commitment to seniors in temporarily funded beds in a residential care facility in Surrey that they would not have to move from that facility. FHA later went back on its commitment and told seniors still living in that facility that the health authority could no longer fund the beds and that they would have to move within a month and a half.

The issues investigated included:

- Whether the decision to move residents was fair and reasonable given the earlier commitment
- Whether the notice provided to residents and families was adequate
- Whether FHA considered the risks to the health and safety of seniors being moved
- Whether the planning processes followed by FHA were sufficient
- Whether FHA required compliance with regulatory notice requirements

The Ombudsperson found that the FHA acted unfairly in deciding to move the residents out of temporarily funded beds in light of its prior written commitment. The investigation resulted in seven findings and nine recommendations.

Key recommendations to FHA included:

- Apologize to residents and families at Newton Regency affected by its decision (Recommendation 1.1)
- Provide at least 60 days' notice to residents and families of decisions to cease funding beds (Recommendation 2.1)
- Inform people whether an offered placement is temporary or permanent and explain the difference between them (Recommendation 2.2)
- When planning to transfer seniors, ensure sufficient flexibility to take individual circumstances into account and to minimize adverse effects (Recommendation 3)
- Take action to ensure operators are in compliance with the requirement to provide notice of a decision to close or substantially change a residential care facility (Recommendation 5.1)

Fraser Health Authority agreed to implement all of the recommendations.

² <https://bcombudsperson.ca/documents/honouring-commitments-investigation-fraser-health-authoritys-transfer-seniors-temporarily>

Page 11 to/à Page 33

Withheld pursuant to/removed as

s.14