ACCA Position Paper for Legislation Concerns in Alberta

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Executive Summary

The purpose of this position paper, developed by ACCA membership, is to address key concerns related to **the Ministerial Regulation** and **the Regulation of the Continuing Care Act**. Continuing Care is a specialized field that provides essential services to Alberta's most vulnerable populations, often addressing complex medical and mental health needs.

The Legislation Interest Group conducted a comprehensive review of both the Ministerial Regulations and the Regulations under the Continuing Care Act. This review was carried out with due diligence to identify potential implications and areas for improvement ahead of the Act's full implementation in April 2025. Please refer to **Appendix A** for the **Analysis of the Regulations.**

As a result of this review, the Legislation Interest Group is presenting Alberta Health and Seniors, Community and Social Services (SCSS) with several critical recommendations. The recommendations focus on improving licensing and renewal processes, streamlining appeals, and addressing challenges that impact Operators' ability to successfully care for Albertans while maintaining sustainable business models of care. These recommendations aim to support a robust, transparent, and effective regulatory framework for Alberta's continuing care system.

With the transition of the program staff in the Continuing Care Division moved to SCSS, it will be critical for SCSS and Alberta Health staff to work closely in addressing the issues identified in this position paper.

Recommendations

(1) Administrative Burden

ACCA recommends a thorough review of the administrative burden associated with the requirements outlined in the Regulations, which significantly impact an Operator's human and financial resources. Alberta's Continuing Care sector faces excessive red tape and redundancies, exceeding those of other provinces, and creating unnecessary strain on Operators.

It is recommended that Alberta Health collaborate with the Ministry of Service Alberta and Red Tape Reduction to address these redundancies while continuing to safeguard the needs of residents. Simplifying regulatory processes will align Alberta's requirements with national best practices, enabling Operators to focus resources on delivering high-quality care. For example, providing recent inspection reports and insurance is not very useful since these documents will expire many times during the 4 years.

ACCA recommends that new legislation prioritize the reduction of unnecessary administrative processes, such as the full resubmission of licensing information every four years, overlapping

audits (e.g., accreditation requirements, Public Health inspections). By streamlining these procedures, Operators can ensure compliance without diverting critical resources from resident care.

(2) Canadian Mortgage and Housing Corporation (CMHC)

ACCA has consulted with the Canadian Mortgage and Housing Corporation (CMHC) to evaluate the impact of a four-year licensing term on Operators' ability to secure adequate insurance coverage and mortgage financing. Although Operators must disclose the licensing timelines, CMHC will manually review the request to determine eligibility in terms of meeting their criteria. Current licensing requirements create challenges for CMHC when considering large mortgages for Operators, as the need to reapply for licensing every four years introduces uncertainty that can deter long-term financial commitments. In addition, ongoing discussions with CMHC at the federal level, facilitated by the Canadian Association of Long-Term Care (CALTC), further highlights the importance of aligning licensing practices with financing realities. Addressing this issue is critical to ensuring that Operators have access to the financial resources needed to maintain and expand continuing care facilities, ultimately supporting Alberta's growing care demands.

(3) Termination of an Agreement with the Operator

Given the severity of the cost of the penalty under the Regulations, ACCA recommends that Alberta Health/SCSS implement a clear and formalized corrective action process in the event of a desire to terminate an agreement with an Operator. It is important to have a high bar for this measure to be invoked, this process should include an incremental application of corrective actions, providing Operators with opportunities for course correction prior to termination. Additionally, Alberta Health/SCSS should ensure that contingency plans for residents are developed and implemented during this period to safeguard their well-being.

Currently, this process is complicated by the fact that Alberta Health Services (AHS) maintains agreements with Operators rather than the Government of Alberta (GOA) directly. For example, if AHS decides to terminate an agreement, it should be required to include a contingency plan as part of the termination process. This responsibility should be shared between AHS and the GOA and formalized within the Regulations to ensure clarity and accountability.

(4) Safeguards for Residents in Continuing Care Home

Given the severity of the penalty for an Operator, ACCA recommends that Alberta Health/SCSS clearly identify and formalize safeguards for residents and staff in the event of an immediate facility closure. It is imperative to set a high bar for this penalty to be invoked. These safeguards should include comprehensive contingency plans to ensure continuity of care, relocation support for residents, and measures to address the well-being and employment stability of staff.

This responsibility should be shared jointly between Licensing and Compliance Monitoring Branch (LCMB – Alberta Health) and AHS and formalized within the Regulations. SCSS needs to be in the communication pathway given the transition of the Continuing Care Division to SCSS. A clearly defined framework will ensure that all stakeholders understand their roles and responsibilities, minimizing disruption and maintaining resident safety during closures.

(5) Licensing

ACCA recommends that Alberta Health/SCSS consider implementing an evergreen licensing process for Operators who consistently meet or exceed the standards required by Accreditation and other auditing procedures. This approach would streamline licensing for high-performing Operators, reducing administrative burdens while maintaining regulatory accountability.

An evergreen licensing process should be explicitly identified in the Regulations, ensuring clear criteria and procedures for its application. Alberta remains the only province that mandates a completely new license application every four years, creating unnecessary administrative challenges and operational uncertainty.

(6) Resident and Family Councils

ACCA recommends that Alberta Health/SCSS require Operators to implement a formal policy outlining the mechanisms for gathering resident and family input and feedback. This policy should be a contractual requirement for Operators under their agreements with Alberta Health Services (AHS) and not with the Government of Alberta (GOA).

The terminology "Resident and Family Council" is not universally applicable across all continuing care environments. Instead, the Regulations should specify that Operators must establish policies to ensure meaningful engagement with residents and families, tailored to the specific context of their facilities.

Clarifying this requirement and standardizing expectations will enhance transparency, improve care quality, and ensure that residents and families have an effective voice in care planning and decision-making processes.

(7) Supply of Medication

ACCA recommends that Alberta Health/SCSS consult with the Alberta College of Pharmacists to review and refine the wording in this section of the Regulations. ACCA is concerned that decreasing the pharmacy hours (November 2024) will have an impact on the interdisciplinary aspect of the Continuing Care teams, with potential impact on staff, residents, family education, audits, and projects such as Appropriate Use of Antipsychotics (AUA).

(8) Issued identification from Applicants

ACCA recommends that Alberta Health/SCSS provide clear justification for the requirement of government-issued identification from Operators during the license renewal process. The purpose and necessity of this requirement remains unclear, creating confusion and adding an unnecessary administrative step for Operators. ACCA recommends that Alberta Health/SCSS consult with the Office of the Information and Privacy Commissioner to ensure that the management of personal information is handled in compliance with privacy legislation and best practices. Specifically, the requirement for Operators to provide personal information is unnecessary and should be rescinded. All staff in the Continuing Care sector are required to complete a criminal record check and a vulnerable person check as part of their employment contract and to safeguard the Albertans they are serving.

(9) Appeal Panel

ACCA recommends that Alberta Health/SCSS review the expectations, expertise, qualifications, and experience required for the Appeal Panel to ensure its effectiveness in addressing issues specific to the Continuing Care sector.

ACCA supports the establishment of an appeal panel dedicated specifically to the Continuing Care sector. This panel should be composed of members with the necessary experience and qualifications to address sector-specific challenges, such as regulatory compliance, care standards, and operational intricacies. A specialized appeal panel would enhance fairness, build trust in the appeals process, and ensure that decisions are informed by a deep understanding of the sector's context and priorities.

(10) Staffing Plan

ACCA recommends that Alberta Health/SCSS remove this requirement from the Regulations and instead allow it to be initiated as a request from residents and caregivers. Establishing such provisions through voluntary requests ensures flexibility and responsiveness to the unique needs of each care environment, without imposing unnecessary regulatory mandates.

This approach respects the autonomy of residents and caregivers while reducing administrative burdens for Operators. It also aligns with the principle of fostering collaborative, person-centered care that adapts to individual circumstances and preferences.

(11) Compliance with Staffing Requirements

ACCA recommends that the Director ensure all other available remedies are fully explored and exhausted before imposing any financial penalties on Operators. This approach would prioritize corrective actions and collaborative problem-solving, allowing Operators the opportunity to address issues and comply with requirements before facing punitive measures.

By adopting this framework, Alberta Health/SCSS can maintain a fair and balanced regulatory process that supports continuous improvement, encourages compliance, and minimizes undue financial strain on Operators. Such an approach aligns with principles of fairness and transparency while safeguarding the integrity of the continuing care system.

(12) Compliance Notices

ACCA recommends that Alberta Health/SCSS streamline the compliance process to reduce highly unreasonable financial penalties as well as the extensive and cumbersome requirements currently placed on Operators. The existing process, which mandates that Operators notify multiple parties of a complaint, imposes significant administrative burdens of up to $100,000 for each non-compliance event and detracts from their ability to focus on delivering high-quality care. A simplified compliance process should prioritize efficiency while maintaining accountability. This penalization does not exist to this extent in other provinces that have a very accountable corrective action process for Operators that are found not in line with the requirements of the Regulations.

Purpose of the Position Paper

The purpose of this position paper is to examine and determine of the Ministerial Order Regulations and Regulations under the Continuing Act. Below is a review of the issue, analysis, and consideration of the sections of the two Regulations impacting operators in the Continuing Care sector.

Background

- ACCA provided a consultation with its membership and report to Alberta Health on Bill 11 in 2021.
- ACCA conducted a review of the licensing, compliance and monitoring draft policies for the Continuing Care Division, Alberta Health in the spring of 2024 and involved a member organization in the review.
- It is recognized that skill and expertise from licensing to enforcement is required by the staff overseeing the Continuing Care area in the Government of Alberta in terms of understanding the uniqueness of the Continuing Care homes in their delivery of supports and services for the most vulnerable and often complex medical and mental health Albertans.
- The Legislation Interest Group is presenting to Alberta Health several recommendations related to the licensing, renewal processes, appeals and the impact on Operators having success in caring for Albertans and the ability to continue with their business models of care.

Participants on the ACCA Legislation Interest Group

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Appendix A

Analysis of the Two Regulations of the Continuing Care Act

Ministerial Continuing Care Regulation		
Issue	Analysis	**Consideration**
Section 5 – Payment by Minister for Health Goods and Services	This section states that a facility-based care agreement must include *the amount of payments to be made*. This section should more clearly stated as it is left open to interpretation. • Where does private pay beds fit or are they outside of this clause? It would be helpful to clearly state in the regulations whether they do or do not apply to non-AHS and non-contracted facilities (i.e. private-pay facilities) • Given the changes with AHS, who will determine the setting of prices in a non-contracted facility	Clarification of this section
Section 12 (Prescribed Parties to Facility-Based a Care Agreement) and 13 (Prescribed Parties to Home and Community Care Agreement))	These two sections refer to *amount of payments to be made* for home care. There are Albertans who pay privately for their home care supports and services. The term "prescribed" home and community care, which is defined as the care and services authorized by a regional health authority.	This section applies to only the care and services authorized by a regional health authority. Clarification requires that this does not apply to private providers.

Section 12 and 13 Prescribed Health and Services and Prescribed Other Goods and Services	This section references *prescribed other goods*	The listing of the services and goods requires clarification to ensure consistency in the delivery of such services and products for residents. For example, some Operators are asked to maintain the resident's equipment such as wheelchairs, adaptive utensils, maintenance of lifts, but are not funded to do so. There is inconsistency across the regional health zones for Operators. ACCA would appreciate flexibility for the operators with the Regional Health Authority appreciating the need for flexibility to best meet the needs of a resident's care.
Regulation under the Continuing Care Act		
Section 14 Content of the Agreement	14(1)(e) and 14(2)(c) refer to the termination date of an agreement. If the GOA reserves the right to terminate a funding contract with reasons to terminate with 12 months' notice, then the provision such as S14(2) of the Continuing Care Act are not relevant. Therefore, there is no need to require a licence renewal under S14(2) if the GOA can terminate a contract within 12 months' notice.	Clarify the intent of the termination date of the agreement

Section 15.1 and 15(2) – Termination of Agreement by Parties	This section refers to contracts being terminated in 12 months with reasons for the termination. • It is anticipated that CMHC will not have the necessary assurance that operators will be able to fulfil their financial obligations. • Currently regions of AHS enter into tri-partite agreements to ensure that CMHC has sufficient notice before a termination notice is issued. With the current and ongoing high interest rates, many operators have approach CMHC to obtain a lower interest rate on their mortgages.	ACCA contacted CHMC regarding whether there is a risk for operators to meet the eligibility criteria of CMHC or be renewed with CMHC due to the reassessment of an operator's license every four years or with 12 months' notice of termination. CMHC conducts manual review, and the operator is required to disclose the requirement of their license being renewed every four years or termination of 12 months' notice. This may impact an operator's standing with CMHC.

Section 16(1) - Direction to Terminate Agreement	Under this section a required licence is by the continuing care operator. Section 16(2) allows the Minster to direct the regional health authority to terminate a facility base agreement.	Clarification is required on the following questions: What are the protection and safeguards for residents once the agreement with the continuing care operated is terminated? What happens in a situation where the employees are unionized employed as there needs to be notice of the termination within the rules of the collective bargaining. There is no corrective action or timeline to improve any deficiencies noted for the operators.
Section 27(1) Application for a New Licence under the Continuing Care Regulation	Under 27(2) (a) to (4) is lengthy and arduous process for a new a license. Operators also participate in Accreditation, Health and Safety Inspections, Fire Inspections, compliance with the Safety Codes Act, and maintenance inspections.	ACCA recommends streamlining the process and the information required for renewal of licenses.

Section 28(1) - Application to Renew or Amend License under the Continuing Care Regulation	This section requires operators to provide all the information and documentation require under S27(1) when reapplying for a license. This is labour intensive practice and does not address operators in which there have been no changes or alterations to their sites.	Other jurisdictions such as BC and Ontario do not have this requirement. Review the process of evergreening. In BC, they do not need to renew our LTC licenses, they remain active in perpetuity. If an operator has serious challenges, in rare cases a public administrator appointed on an interim basis. It is very uncommon that an operator would lose their license and must re-apply.

Section 29(1) – Licensing Decisions under the Continuing Care Regulation	The Section of the Regulation discussing the criteria to impose conditions on license or refuse to issue, amend or renew a licence requires more clarity on the criteria beyond history of contra interventions, unable to operate a facility based on what criteria, or false or misleading statements on the application or failing to provide information required under Section 27(3) and Section 30(2).	Requires a more specific criterion and the process of issuance of the notice to operators should require three notice processes. The obligation for the Statutory Director to consider corrective action before refusing a license appears to be missing from this section. And, in the case of a refusal to renew a license, the obligation of the GOA to ensure the ongoing safety and well-being of residents in the immediate aftermath also appears to be missing from this section.
Section 29(2)(c)(vi) Licensing Decisions – a Stop Order	A stop order requires continuity of care of residents.	Although an appointment of an Official Administrator is noted in Section 61(2), there needs to be clarification on the process that is used in a Stop Order.
Section 40 (1) – Safeguarding Personal property under the Continuing Care Regulation	This section refers to the resident or resident's legal representative can request the operator to safeguard their personal property and must receive in writing by the resident or the resident's legal	Philosophically this is ideal. However, a resident that has been diagnosed with dementia as they cannot give consent/authorization.

	representative to use personal property such as money.	Legal representation or caregivers may not be available. In numerous cases, AHS has asked operators to function as a "informal trustee." The ongoing realities for a resident are not recognized in this section and there are often unintended consequences. For example, under this section, an operator may be able to purchase a therapeutic item such proper wheelchair seating such as recommended by a physiotherapist without consent of the resident due to their capacity but not able to purchase toiletry items. This safeguarding of personal property should be a policy within the organization beyond a trust account and such policy is discussed a pre-admission and ongoingly.
Section 44(1) and 44(2) Supply of Medication under the Continuing Care Regulation	For a Type A Operator, this section requires the operator to have sufficient supply of medication in the continuing care home to meet the needs of the eligible residents in the continuing care home. The operator in section assumes the role of a	We recommend consultation with the College of Alberta Pharmacists on the wording to ensure clarity: "A Continuing Care Home will engage a licensed pharmacist to

	pharmacist to ensure there is an adequate supply of medications. The wording is this section is not clear and should indicate that the operator is discharging their responsibility to a licenced pharmacist.	ensure there is an adequate supply of drugs in the Continuing Care Home to meet the needs of eligible residents"
Section 46(1) -Staffing Plan under the Continuing Care Regulation	This section requires operators to provide their staffing plan to residents, families, employees, and residents councils ON REQUEST.	The purpose of this section is unclear and should be removed.
Section 47 – Compliance with Staffing Requirements under the Continuing Care Regulation	Operators should be granted a fair opportunity to appeal the imposition of a penalty. There is mention of an appeal process, but there is lack of detail. There should be no penalties applicable where an operator issues an appeal to the health authority for emergency assistance. A major grievance of operators during the COVID 19 pandemic was that the health authority did not provide staffing to operators to assist during emergencies. Importantly, idled nursing staff from closed acute care programs were not made available to CC operators to assist in emergency situations. In contrast, health authorities in B.C. regularly provided staff to assist CC operators during emergencies such as the pandemic, wildfires, and floods.	The Director should ensure that all other available remedies are exhausted before any financial penalties are imposed.
Section 48 – Clinical Staff Members under the Continuing Care Regulation	The proposed penalties are unreasonably high and not necessary. In the past, where	This section should be removed in its entirety, as it does not promote

	health authorities have encountered issues with operators, they have effectively exercised other levers of control to achieve desired change. For example, in Calgary, the health authority announced the cancellation of a funding contract for a non-compliant care home and appointed an administrator. This is a significant sanction and there were no other sanctions needed. Personal liability should not be imposed on officers, directors, and agents of a corporation. These provisions do not recognize the difficulty in recruiting and retaining Directors and adding to the personal risk they already endure through monetary penalties is not fair. Personal Liability insurance is extremely difficult and costly to acquire and would severely impact the sustainability of CC services and staffing. CC staff are dedicated, hardworking individuals who operate in highly challenging environments with limited resources, while carrying considerable responsibilities. They should not be personally liable for organizational, or wider systemic failures. For example, if there is a shortage of staff in a rural area, it would not be acceptable to hold a Director of Care responsible.	collaboration or incentivize new entrants to the sector. Clarity is necessary on whether the term "corporation" Under Section 48 (2), includes a society.

Section 50(1)– Physician or Nurse Practitioner under the Continuing Care Regulation	This section refers to physician (and or nurse practitioner) coverage in long term care facilities. The regulations state that an operator **"shall ensure"** nurse practitioners and physicians' coverage is in place.	The regulation should be restated to "will make the best efforts to ensure" or "will make best efforts to ensure. This standard should be one of reasonableness. Further, the fee schedule for physicians in long terms is $29.00 per person versus $89.00 per person in supportive living. Attraction of physicians to long term care continues to be an issue that could be easily resolved.
Section 66(b) of Government - issued identification from applicants	Breaches Alberta's privacy legislation and the safety protocol for the security of required private information.	Consult with the Office of the Privacy Commissioner. Other jurisdictions such as BC and Ontario do not require this level of information from Operators.
Appeals (Part 8) – Section 69 to 77 under the Continuing Care Regulations **Section 67 – Amount of the Administrative Penalty**	Section 67 outlines the nature of an administrative penalty The Director of Alberta Health can issue an administrative penalty for violations of the act, regulations, or standards. maximum daily amount is $10,000, and the total penalty can't exceed $100,000.	The amount of the penalty depends on the nature of the violation and the provider's compliance history. The penalty amount can be a single sum or a daily amount. The The penalty is one of several enforcement actions that Alberta Health can take. The provider can appeal the penalty decision to an appeal

		panel. This financial penalty is not aligned with what other provinces are doing such as Ontario where the maximum is $10,000 and not $100,000. The other concern is the personal liability of the operator versus the corporation the operator owns. The liability is on the corporation not the person,
Section 71(1) Conduct of Appeal	This provides operator the right to appeal to the Appeal Panel. The Appeal Panel provides fair, impartial and independent hearings for Albertans who are appealing government decisions about services they receive or applied for, including: Assured Income for the Severely Handicapped (AISH) Child Care Licensing (CCL) Child, Youth and Family Enhancement (CYFE). This panel does not have expertise with Continuing Care. Appeals take time to conduct. There is no mention as to what happens to the operations as the appeal is waiting to be heard or the residents residing in the continuing care facility	An Appeal Panel dealing with an appeal from the Continuing Care sector needs members that possess expertise in Continuing Care such as a medical background, administrative background as opposed to an Appeal panel from another sector that is unrelated to the Continuing Care field. There is no discussion in the Regulations on the process while an operator is waiting for an Appeal or the decision from the Appeal Panel. Do the residents move to another facility pending the findings? This section is not client-centric or

		supportive of the Operator.

References

Province of Alberta. (2024). Continuing Care (Ministerial) Regulation: Alberta Regulation 44/2024. King's Printer, Edmonton, Alberta.

Province of Alberta. (2024). Continuing Care Regulation. Alberta Regulation 21/2024 King's Printer, Edmonton, Alberta.