ONTARIO'S NEW COMMUNITY HOUSING REGULATORY FRAMEWORK

FREQUENTLY ASKED QUESTIONS

ONTARIO NON-PROFIT
HOUSING ASSOCIATION

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ABOUT THIS DOCUMENT

The purpose of this document is to provide a primer for ONPHA membership and other system stakeholders to better understand the new regulatory realities that came in force on July 1st, 2022 through amendments to regulations to the *Housing Services Act, 2011*. This document is meant to help begin preparing Housing Providers, Service Managers, funders, and partners for the key discussions, Council and Board meetings that will surround these changes in the near future.

With these regulations in effect, ONPHA has been working to understand and interpret the impacts on the community housing sector now and in the future. ONPHA is here to support all of our members and sector partners to understand and navigate this new reality by providing information and case-by-case advice/consulting. At the end of this document are links to a number of ONPHA resources discussing and breaking down the regulatory changes.

The role of ONPHA is to ensure that its membership and other system stakeholders have a clear understanding of the changes to housing regulation, based on insights gathered from government decision makers, by providing support and advice to those who want to navigate this change. In the weeks following this regulatory change, ONPHA intends to share additional resources and supports for providers to prepare them for incoming changes including End-of-Agreement and End-of-Mortgage.

This document is designed as a quick reference for Housing Providers, Service Managers and their partners such as boards of directors, municipal councils and/or funding partners. We are here to keep the sector together and help lead sector transformation though a new approach to creating a long-term sustainable community housing system. *For any further questions, contact ONPHA.*

OVERVIEW OF THE NEW FRAMEWORK

In April 2019, Ontario released the Community Housing Renewal Strategy outlining government's plan to work with partners to stabilize and grow the community housing sector. In 2020, enabling legislative amendments were made to the *Housing Services Act, 2011* (HSA). These changes were intended to:

- Create a streamlined framework for Service Managers and Housing Providers to continue delivering community housing;
- Modernize accountability approaches by broadening the types of housing assistance that can be counted towards required service levels; and
- Require Service Managers to have an access system for forms of housing assistance in their service areas.

The Ministry of Municipal Affairs and Housing (MMAH) has implemented changes to *O. Reg. 367/11* intended to address key roadblocks and opportunities within the system. These changes are intended to "work together to create the foundation for mutually beneficial service relationships between Service Managers and Housing Providers, modernize accountability approaches to put people first, and update rules for Service Managers to improve access to housing assistance for people most in need".

QUESTIONS AND ANSWERS

TOPIC #1: OVERVIEW

1.1 Who is affected by the new regulations?

Broadly, the regulatory changes will have impacts on a number of key players within the system. In the immediate term, the regulatory changes will impact designated Housing Providers and municipal Service Managers most significantly. Below is a brief description of how different system actors are affected by the regulatory changes:

Housing Providers

- Housing Providers are defined under the *Housing Services Act,* as a person who operates a "Housing Project". The HSA defines the following categories of housing projects:
    - Public Housing
    - Rent Supplement (includes: Regular, Accelerated Rental CMHC/OMC, Community Integrated, Assisted Rentals, Limited Dividend, Private Assisted Rental, Ontario Rental Construction Plan, Canada Rental Supply Plan, Renterprise, Low Rise Rehabilitation, Ontario Rental Construction Loan, Assisted Rental Housing, Ontario Accelerated Family Rental Housing)
    - Limited Dividend
    - Non-Profit Low Rental
    - Non-Profit 2% Write-Down
    - Non-Profit Full Assistance

- Housing Providers reaching their End-of-Mortgage (EOM) and End-of-Agreement (EOA) timelines will face either signing a Service Agreement with their Service Manager and still be partly governed by the HSA, or choose to exit the HSA system through an Exit Agreement with the Service Manager. More information about considerations around system exit are provided later in this document.

Service Managers

- Service Managers refers to a level of government in Ontario responsible for carrying out the funding responsibilities of the HSA including Consolidated Municipal Service Managers (CMSMs) and District Social Services Administration Boards (DSSABs).

- Service Managers will either enter into Service Agreements or Exit Agreements with the Housing Providers in their area. *More information about the new Service Agreements and Exit Agreements is provided later in this document.*

- When entering into Service Agreements, Service Managers will be responsible for the funding of rent-geared-to-income subsidies. The regulations now state that a Service Agreement "must include a requirement for the service manager to provide funding to the housing provider, in respect of any units in the project where the household pays geared-to-income rent...")

- It is expected that the updated regulations will include more specific stipulations about the role of the Service Manager in system funding including rental assistance programs and RGI subsidies. *In 2020, ONPHA drafted a submission to the provincial government with our perspectives on how to execute key elements of the regulatory change, which can be found [here.]*

Figure 1

1.2 What could the sector look like as a result of these changes to the community housing system? What are the incentives for providers to stay in the community housing system?

In 2020, ONPHA launched a Solutions Lab to develop a collective, cross-sector vision for the future of the community housing sector in the face of impending change. The culminating report summarizes this collective vision, identifying several key themes to conceptualize the community housing sector for the future (see Figure 1). As more information about the changes emerge, ONPHA will analyze those changes, including understanding how these changes align with our collective vision for the future of the system. We acknowledge that the next number of years will be filled with rapid change, which presents an exciting opportunity for ONPHA and our members to be part of preserving and evolving the sector in the future.

Going forward, our members (and all sector players) will be required to take a concerted effort to think about their future within the system in the face of new agreements, new requirements & planning, and new potential sector partners. ONPHA will continue to advise and work with our members to support them to understand and navigate this change to optimize their sustainability and success in the future.

1.3 Who is paying for the transition process?

ONPHA's position is that the Ministry of Municipal Affairs and Housing has an important role to play supporting Housing Providers and Service Managers to sustainably navigate this transformation, including the cost incurred to participate in the negotiation process over the coming years. It is expected that Housing Providers and Service Managers will have operational costs associated with activities including capacity-building amongst staff about the changes, and legal advice/mediation and other related services for the negotiation process.

TOPIC #2: SERVICE AGREEMENTS

2.1 What is expected to be covered by Service Agreements?

The new regulations include a list of what must be included in Service Agreements. Based on the regulations, Service Agreements will include, at a minimum the following information:

- Service Levels & Target Plans: including the RGI vs. other housing subsidy mix and the level of subsidy associated with those service levels.
- Financial Planning: Housing Providers and Service Managers will be required to work together to co-develop a financial plan that also articulates other financial assistance to be made available to providers
- Term of Agreement: the regulatory changes will require a minimum 10-year agreement and Service Agreements will continue in effect after the end of the term until a new Service Agreement is struck or the Service Manager and Housing Provider enter into an Exit Agreement.

2.2 What flexibility is available to Housing Providers and Service Managers in terms of negotiation?

Negotiations will take place on a provider-by-provider basis with their relevant Service Manager. In the new regulatory environment, the subsidy and unit benchmarks currently set out by a provincial framework will no longer be in place. The Service Manager and Housing Provider will establish funding levels based on (1) the rental assistance required to administer service; and (2) the co-designed financial plan between the Service Manager and Housing Provider. *In 2020, ONPHA made a submission recommending some key negotiating variables/supports be put in place to support this transition. For more information click here.*

2.3 Will Service Managers continue to fund the same number of RGI units within the system?

Target plans for RGI units and subsidies will be set by Service Managers, which have the flexibility to do so in the context of their local conditions and housing realities. All current RGI households will continue to receive RGI assistance in the new system, though the mix of RGI versus other types of subsidy may shift in the new target plans to align with regulatory changes/Service Manager analysis. *See question 2.4 for more information.*

2.4 Section 162 (2) Consent required for certain transactions refers to the transfer or mortgaging the housing project or the land where it is located only with the written consent of the service manager but not purchasing additional property. I would assume that the purchase would involve taking on a new mortgage which would need the consent of the SM.'

The consent requirements under Section 162 only apply to Part VII housing projects and designated housing projects who have a pre-reform operating agreement. Housing providers who enter into an Exit Agreement or Service Agreement (and become Part VII.1 housing projects) are deemed to no longer be designated housing projects (see sections 68.1 and 101.3). Therefore the consent requirements under Section 162 would not apply to such housing projects.

2.5 Is there more clarification available about the detailed elements of the service agreements and the related components? Specific questions below.

- **How much room generally is there for Housing Providers to negotiate with Service Managers?**
- **Are target plans unilaterally determined by service managers in the new framework? Does the provider have a say?**
- **Any parameters for determining the market rent rate?**
- **Any parameters for property tax rebates?**
- **Can providers negotiate full portfolios as part of their agreements, or do they need individual agreements for each project at EOM/EOA?**
- **What options are available for interim agreements (before getting to full portfolio agreement)?**
- **Will there be any guidance providing clear and specific mechanisms to dispute, arbitrate, mediate, or terminate service agreements, if necessary**

We do not currently have detailed information about the Service Agreement content requirements. ONPHA has been working with our legal advisors at Robins-Appleby LLP, and representatives from the sector to establish template information that can be leveraged by providers for reference purposes. Please contact ONPHA if you are interested in more information.

TOPIC #2: SUBSIDY INFORMATION

3.1 Will Housing Providers need to continue to offer the same number of RGI subsidies in their projects?

Effective July 1, 2022, O. Reg. 367/11 was amended to allow additional types of Service-Manager funded housing assistance to count towards existing service levels. The Service Managers can include additional types of housing assistance into service levels when:

- Households pay no more than 30% of their adjusted family net income on rent (not including households receiving social assistance); or

- Are providing a benefit that follows existing portable housing benefit calculation rules and serves/prioritizes any client group. With this provision, there is no requirement to follow the RGI waitlist eligibility, priority, and selection rules.

3.2 What types of assistance can count towards the service levels in a Service Agreement?

Broadly, the regulations are clear that subsidies are to be provided by the Service Manager (in order to be counted towards service levels). Provincially and federally-funded subsidies such as the Canada-Ontario Housing Benefit, MOH programs, and MCCSS programs cannot be included in the service level targets and measurement.

- Service Manager-funded housing assistance refers to the subsidy or rent reduction provided to the household is directly funded by the Service Manager and is not funded by other levels of government.
- Any form of housing assistance that aligns with the requirements included in Question 3.1 above may be included towards service levels. There is no requirement to follow existing RGI eligibility, priority, and selection in order for this assistance to factor into service levels.
- In order for assistance to be factored into service levels, households served must have incomes at or below the average household income level for the relevant service area. This is articulated further in *O. Reg 370/11.*

3.3 What considerations are there around Households Receiving Social Assistance?

The regulation is also amended to include Service Manager-funded forms of housing assistance that serve social assistance clients when the household pays no more than their social assistance shelter allowance towards rent. More details on this can be found in Schedule 4.2 of *O. Reg. 367/11.*

3.4 What considerations are there around Households Served in Urban Native Housing?

Households with incomes at or below the household income limits that are served with housing assistance funded by a Service Manager that meet the requirements may also count towards service levels, which includes individuals across all demographic groups.

3.5 Can properties be sold under the new framework, for example as part of a broader asset management strategy in place by Housing Providers?

Yes. The requirements for sale of housing projects under the *Housing Services Act* include:

- Service Manager consent for the sale
- Commitment to ongoing accommodation of households living in the housing project
- Ongoing delivery of RGI (or other housing assistance) to households receiving said assistance; and
- Ongoing operation of the project by the existing or another Housing Provider; or redevelopment of the project by the existing or another Housing Provider; and/or reinvestment of the sale of the project into affordable housing.

3.6 What are the rules to remove households from the waitlist under the new system?

The rules to remove households from the waiting list will remain the same.

- If a household accepts a portable housing benefit offer that follows existing RGI waiting list, priority and selection rules (as per Schedule 4.1), they must be removed from the housing waitlist.
- If a household accepts assistance covered under schedules 4.2 and 4.3 (including portable housing benefit that do not comply with RGI rules) cannot be removed from the waitlist.

If you require more clarification about waitlist management, you can reach out to ONPHA for more information.

TOPIC #4: SYSTEM EXIT

4.1 If a provider wants to exit the system at End-of-Mortgage, what are options for providers and the requirements for each option?

Housing Providers may choose to exist the HSA and its operating environment once their mortgage or operating agreement ends. Housing Providers have four overarching options when they reach the EOM/EOA timeline and wish to exit the system: (1) sell properties; (2) transfer properties; (3) continue operation; and (4) redevelopment. In order to exit the system, the provider first needs to enter into an Exit Agreement with the Service Manager. The details of Exit Agreements will be negotiated with the Service Manager but the regulations contain minimum requirements for Exit Agreements. In general, the Exit Agreement must include:

- A plan for ongoing accommodation of households living in the project including continued delivery of assistance to households receiving RGI assistance;
- A plan for at least one of the following 1) ongoing operation of the project by the existing or another Housing Provider; 2) redevelopment of the project by the existing or another Housing Provider; 3) reinvestment of the sale of the project into affordable housing.

4.2 If Housing Providers are selling a property, who should we consider selling it to?

Wherever possible, ONPHA recommends first attempting to sell within the community housing sector in order to preserve our sector's scale and capacity to meet needs, and ultimately achieve the targets set for us to achieve.

4.3 If I plan to exit the system, what options do Housing Providers have to operate outside the structures and regulations of the HSA?

ONPHA is in the process of gathering more legal and policy insight into this question. ONPHA will update this guide once more insight or information is made available.

4.4 In cases where requirements for disposition of assets for HSA are lower than those of ONCA, are Housing Providers considered public benefit corporations?

Disposing of assets would not impact whether an organization is considered a public benefit corporation under the *Ontario Not-for-Profit Corporations Act* ("**ONCA**"). The trigger for becoming a public benefit corporation under ONCA is receipt of donations or gifts valued over a certain amount. A "public benefit corporation" means a charitable corporation or a non-charitable corporation that receives more than $10,000 annually in donations/gifts from persons who are not members, directors, officers or employees of the organization or in the form of financial assistance or grans from government.

4.5 Are there any clarifications on a dispute resolution process associated with the legislation?

The new HSA regulations do not stipulate specific requirements for a dispute resolution process in Service Agreements other than the fact there needs to be a process. We can expect this to be negotiated between housing providers and Service Managers.

4.6 Are 'triggering events' a part of the new regulations?

The HSA regulations do not specifically address the application of "triggering events" under section 83 of the HSA to Part VII.1 housing projects and housing projects under an Exit Agreement. We would like to see clarification from the Ministry on this question. Our understanding is that housing projects which enter into a Service Agreement (and therefore become Part VII.1 housing projects) and those that enter into an Exit Agreement will no longer be designated housing projects. Therefore, we expect that the events in section 83 of the HSA which can trigger a Service Manager's enforcement rights under the HSA should no longer apply to such projects. However, a Service Manager could contractually arrange enforcement rights through a Service Agreement or Exit Agreement.

OTHER RELEVANT RESOURCES

- Solutions Lab Culminating Report
- ONPHA's Analysis of new regulatory framework - service and exit agreements

ADDITIONAL SUPPORT

ONPHA is here to support you. We're building out a robust service to help you every step of the way. Contact ONPHA at policy@onpha.org or visit us online at www.onpha.on.ca.