



**Briefing Note:**

**Care Occupancy Designation**

**Under Ontario Regulation 150/13**

**February 2015**



## **ISSUE**

Some non-profit housing providers have been designated “care occupancies” by their local fire departments under Ontario Regulation 150/13. ONPHA has learned that this designation is being applied differently across jurisdictions, with significant consequences for non-profit providers that could impact their operational viability.

## **ABOUT ONPHA**

The Ontario Non-Profit Housing Association (ONPHA) represents 734 non-profit housing providers in 220 communities across Ontario. ONPHA members operate more than 160,000 non-profit housing units and provide housing for approximately 400,000 people including seniors, low-income families with children, Aboriginal people, the working poor, victims of violence and abuse, people living with developmental disabilities, mental illness, HIV/AIDS or addictions, and the formerly homeless/hard-to-house.

## **BACKGROUND**

The new definition of a “care occupancy” is outlined in Ontario Regulation 150/13 (“the Regulation”), which replaces the earlier definition in the *Fire Protection and Prevention Act, 1997*.

The Regulation came into force on January 1, 2014. Section 1 states:

*Care occupancy means an occupancy in which special care is provided by a facility, directly through its staff or indirectly through another provider, to residents of the facility*

- a) *Who require special care because of a cognitive or physical limitations, and*
- b) *Who, as a result of those limitations would be incapable of evacuating the occupancy, if necessary, without the assistance of another person.*

When a property is designated a care occupancy, it must comply with additional requirements under the Building Code, including the provision of automatic sprinkler systems and other early warning features. In addition, a number of supervisory staff must be available at all times to carry out the fire plan and assist with evacuation.<sup>1</sup>

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<sup>1</sup> Section 10 of Ontario Regulation 150/13 states: “There shall be sufficient supervisory staff available in care occupancies, care and treatment occupancies and retirement homes to carry out the duties required in the fire safety plan.” The Office of the Fire Marshall and Emergency Management Directive *Staffing Levels in Care Occupancies, Care and Treatment Occupancies and Retirement Homes* (TG-01-2013) further elaborates on the requirements of care occupancies in Sections 3, 4, and 5.



In 2012, the Office of the Fire Marshal assembled a Technical Advisory Committee to examine long-term fire safety provisions for residences that house vulnerable Ontarians. The report developed by the Committee states that these residences, which it classifies as care and treatment occupancies, include retirement homes, long-term care homes, hospitals, and group homes.<sup>2</sup> Committee meeting minutes identify that rental housing, such as seniors' apartment buildings, were not given consideration because they were not deemed housing for "vulnerable" Ontarians.<sup>3</sup>

## **CURRENT SITUATION**

Since the Regulation came into effect, a number of non-profit housing providers have been designated care occupancies by the fire department.

For the most part, non-profit housing providers are mandated to provide affordable rental housing to households, as defined in the *Housing Services Act, 2011*<sup>4</sup> or in operating agreements.

The tenants housed are similar in many respects to those in the private rental market.<sup>5</sup> With the exception of the administration of rent-geared-to-income assistance, non-profit housing providers must meet the same legislative and regulatory requirements as private sector landlords.

Several providers who house seniors have been warned that they may be designated care occupancies. However, seniors' non-profit housing was created primarily because a high percentage of seniors have low incomes and can benefit from interaction with other seniors. Unlike retirement or care facilities, seniors' housing was not created to provide care services or to assist tenants with activities of daily living. Any services received by tenants living in these communities are provided by an outside agency and are incidental to their housing.

In the report from the Technical Advisory Committee, the support services provided in a care occupancy are defined as follows: "Support services rendered by or through care facility

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<sup>2</sup> Office of the Fire Marshall and Ministry of Community Safety and Correctional Services, *Report on Improving Fire Safety for Vulnerable Ontarians – Technical Advisory Committee for Vulnerable Occupancies* (January 2013), p. 6

<sup>3</sup> "Vulnerable Occupancies – Technical Advisory Committee Minutes," (19 September 2012), p. 5

<sup>4</sup> "For the purposes of clause (1) (a), an individual is able to live independently if he or she can carry out the normal essential activities of day-to-day living, either on his or her own or with the aid of support services that the individual demonstrates will be provided when required." O. Reg. 367/11, s. 24 (2).

<sup>5</sup> Some providers offer more specialized supports such for those who live with mental illness or developmental disabilities. For these providers the "care occupancy" designation is appropriate.



management refer to services provided by the organization that is responsible for the care for a period exceeding 24 consecutive hours. They *do not* refer to services provided by residents of dwelling units or suits, or to services arranged directly by residents of dwelling units or suites with outside agencies” [emphasis added].<sup>6</sup>

## **KEY CONSIDERATIONS**

The definition of “care occupancy” in the Regulation is vague and does not consider important criteria, such as:

- a. The mandate of the housing provider: The “care occupancy” designation should relate to the purpose of a residential property, not to individual tenancies. If the intent of a building is to offer special care housing to vulnerable residents, it should be classified as a care occupancy. If an organization’s mandate is to provide housing for independent households, the property should not be classified as a care occupancy.
- b. Client profile: If tenants live independently and do not require daily special care, the property should not be classified as a care occupancy. Our members are committed to building relationships with their tenants and to providing opportunities that improve their quality of life. Some of our members refer tenants to community-based support services or coordinate the delivery of programs by community agencies to meet the needs or interests of tenants. These support services and the staff’s investment of time and effort are not indicative of tenants’ care needs or limitations.
- c. The built form of the property: While retirement homes and long-term care homes generally feature ward-style housing with communal living and dining areas, non-profit housing consists of self-contained units. The built form of non-profit housing reflects the intended purpose of the housing, namely independent living. It also means that in the event of a fire, immediate evacuation of the entire building may not be necessary.
- d. Organizational capacity: Many non-profit housing providers have less than one full-time staff member and limited funds for building retrofits. A care occupancy

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<sup>6</sup> Office of the Fire Marshall and Ministry of Community Safety and Correctional Services, *Report on Improving Fire Safety for Vulnerable Ontarians – Technical Advisory Committee for Vulnerable Occupancies* (January 2013), p. 15



designation means that these organizations will face increased staffing and capital costs. This will place a significant burden on our members, who are prevented by legislation from raising rents to accommodate the cost of capital repair and investment. Ultimately, this will result in increased financial pressures on non-profit housing providers and will limit their ongoing financial viability.

2. The Regulation is being interpreted differently across the province, resulting in arbitrary designations for housing providers:
  - a. The vagueness of the Regulation has resulted in inconsistent application. Our members report that similar housing providers are being designated differently by their fire departments. Even within York Region, members in two different municipalities received different designations. In some areas, fire departments have warned members that they will be designated care occupancies based on misinformation about the property and without speaking to staff.
  - b. The Regulation does not contain an objective measure for assessing residents' need for assistance in evacuation. Fire department staff evaluate tenants' abilities based on their impressions of the tenants and self-reported lists from residents, which may not accurately reflect need.<sup>7</sup> The absence of a uniform method for assessing the number of tenants who require assistance has resulted in the arbitrary and inaccurate designation of non-profit housing properties.
  - c. Fire departments may base a care occupancy designation on the presence of quality of life-enhancing support services operated either on-site or by community-based support providers. The presence of such services should not affect designation. They are often operated by agencies other than the housing provider, even if they are housed on-site. As noted above, services to residents that are operated by external agencies do not qualify as "care" vis-à-vis the care occupancy designation.
3. If non-profit seniors' residences are care occupancies under the Regulation, so are many private sector apartment buildings:
  - a. Seniors living in subsidized seniors' non-profit housing only account for a small number of all senior tenants in Ontario. Many of the same agencies that provide services to seniors in non-profit housing also provide the same services to seniors

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<sup>7</sup> Some residents who do not require assistance with evacuation may include their names on the list, while other residents who do require assistance may be uncomfortable or resistant to admit this.



in private sector rental buildings. Many people with disabilities also currently live in private sector rental housing.

- b. If the Regulation continues to be implemented as currently written, it could reasonably apply to all multi-unit rental apartment buildings across the province. This application would have a serious impact on private sector landlords and tenants.

## **CONCLUSION**

Ontario's 2014-2019 Poverty Reduction Strategy recognizes that a safe and secure home is key to helping people realize their full potential and live with dignity. Our members provide affordable homes to low- and moderate-income individuals, families, and seniors. They are an integral part of poverty reduction in the province.

As implemented, Ontario Regulation 150/13 dissuades non-profit housing providers from partnering with Local Health Integration Networks and agencies that provide services that improve tenants' quality of life. The Regulation acts as a disincentive for housing providers to develop innovative approaches to community issues, and hinders attempts to ensure successful tenancies.

Through the Aging at Home Strategy, the Province has identified the importance of helping seniors live healthy, independent lives. When seniors are able to access care and supports in the comfort of their home, unnecessary hospital visits are avoided and ER wait times are reduced. Regulation 150/13 should be adapted to allow non-profit organizations to connect tenants with services to support this strategy, and to ensure the uniform application of property designations across all non-profit housing providers and private rental buildings.