

THE HOMES FOR THE AGED ACT¹
AND
THE HOMES FOR THE AGED REGULATIONS²

*To add life to years, not just years to life.*³

Introduction

THE Homes for the Aged Act ("the Act") is as welcome a piece of legislation as it is unprecedented in Singapore. Passed in 1988, the Act aims to ensure that minimum standards of hygiene and safety are met by those establishments which fall within its ambit. According to its long title, it seeks to "provide for the control, licensing and inspection of homes for the aged and for purposes connected therewith".

The Act came into effect on 1 February, 1989.⁴

Brief history of the Act

In 1986 the Ministry of Community Development introduced guidelines setting out minimum standards to be met by homes of the aged.⁵ The Act gives statutory force to some of these guidelines as well as introduces powers to the Director of Social Welfare to administer the Act. In addition, the Act introduced the Homes for the Aged Regulations 1989 ("the Regulations") which came into effect on the same day as the Act.⁶

This commentary will briefly examine the salient features of the Act and the Regulations.

Organization of the Act

Section 2 of the Act is the definition section. The most important term defined here is "home for the aged" as the requirements of the Act apply to an establishment only if it falls within this definition.⁷

The Act defines a "home for the aged" to mean:

"any establishment the object of which is, or is held out to be, the provision of residential accommodation with board and personal care for 5 or more old persons, whether able-bodied or disabled . . ."

¹ No. 15 of 1988

² No. s. 29/1989

³ Unofficial motto of U.S. specialists in medicine for the aging and aged, "The Problem of Old Age," *Time*, July 23, 1956, cited in "Contemporary Quotations" compiled by James A. Simpson, Thomas Y. Crowell Company (1964) at page 181.

⁴ *Vide* the Homes for the Aged Act (Commencement) Notification 1989, No. s. 28/1989.

⁵ Official Reports of the Parliamentary Debates dated 29 July, 1988, at columns 485-6.

⁶ *Vide* Regulation 1.

⁷ Section 3 (1) of the Act.

The term “old person” is in turn defined to mean:

“any person of the age of 60 years and above”.

Section 4 of the Act provides for the application for and issue of licences for carrying on homes for the aged. The section also makes it an offence to carry on a home for the aged without being licensed under the Act; it is also an offence to contravene any condition in a licence.

Section 5 of the Act sets out three grounds on which the Director of Social Welfare may refuse the issue of a licence, while section 6 lists a number of grounds on which the Director may revoke or suspend a licence.

Provision is made in section 7 for appeal to the Minister from any decision of the Director and the Minister's decision is made final.

Sections 8 and 9 deal with the duration and display of licences, whilst sections 10 to 12 deal with the transfer and termination of licences.

Section 13 requires the Director to keep a register of all licensed homes, and licensees to keep such register of the residents and staff as the Director considers necessary for the purposes of the Act.

Section 14 gives the Director the important power to visit and inspect premises which he “suspects or has reason to believe to be used as a home ...” and he may “inspect any apparatus, appliance, equipment or instrument or any book, document or record relating to the home, and question any person found in the home or premises in respect of matters relevant to this Act”. To ensure that there is co-operation with the Director and his officers, section 14 (2) provides that prevention or obstruction of the Director's exercise of these powers, or attempts at such prevention and obstruction, amount to an offence punishable by a fine up to \$2,000 or imprisonment for up to one year or both.

A further power is given to the Director in section 15 to direct a licensee to stop the use of “any apparatus, appliance, equipment or instrument in a home” which is “dangerous or detrimental to any person therein or is otherwise unsuitable for the purpose for which it is used”. The Director is also empowered by the section to direct by notice that the licensee install or replace such “apparatus, appliance, equipment or instrument” in the home.

Section 16 empowers the Director to require the licensee of a home to furnish information regarding the home from time to time, failing which the licensee would be guilty of an offence. On the other hand, to prevent the violation of confidentiality, section 18 makes it an offence for any person to disclose information obtained in pursuance of the Act unless the disclosure was made in performance of his duty.

Section 17 of the Act extends the application of the offence-creating sections to bodies corporate.

Under section 19, the Minister is empowered to exempt any premises from all or any of the provisions of the Act and such exemption may be made subject to such terms or conditions he may impose.

Lastly, section 20 empowers the Minister to make regulations for carrying on the purposes of the Act, which regulations will be discussed next.

The Regulations

Regulation 2 contains definitions, the most notable one being that of “care person”. This is defined to mean:

“a guardian, family member, relative or friend of the resident”.

Regulation 5 sets out the facilities and services which the licensee has to provide for residents of the homes including the provision of recreational facilities, therapy and “suitably qualified and competent care staff. The licensee also has to provide “suitable facilities for visits to the home by care persons and to encourage care persons to maintain regular contact with residents”.

In addition, regulation 6 read with the Schedule sets out in detail the conditions that a home for the aged must satisfy. These conditions fall under ten categories:

- A. Homes
- B. Sanitary Facilities
- C. Kitchen Facilities
- D. Dormitories
- E. Dining Area
- F. Environment of the Home
- G. Laundry
- H. Preventing Food from Being Contaminated
- I. Maintenance of Cooking Utensils and Equipment
- J. Disposal of Rubbish.

Many of the regulations set out in the above categories are extracted from the 1986 guidelines. However, some of the requirements have not been incorporated into the Regulations. For instance, the ratios of sanitary facilities to number of beds recommended in the guidelines have been incorporated into the Regulations, whilst the nurse/staff-resident ratios for residents have not.

The Regulations, on the other hand, introduce some provisions not found in the 1986 guidelines. For example, regulation 11 (1) introduces the following requirement:

“The licensee shall forthwith inquire into any complaint of abuse of any resident and shall report its findings to the Director as expeditiously as may be reasonably be expected of it but in any case not later than two weeks after the complaint”.

In addition, regulation 11 (2) states what one might have thought to have been obvious:

“No member of the staff shall strike, shake, shove, or spank any resident or inflict any other form of physical violence on the resident”.

These provisions, designed to protect residents of homes from abuse, were not found in the 1986 guidelines.

The Regulations, as a whole, will no doubt be a useful guide to the operators of homes for the aged besides serving their regulatory function.

Comments

As mentioned, this legislation is novel in Singapore. In the United Kingdom, the Residential Homes Act⁸ was passed in 1980 for mainly the same purpose. This Act, however, gave way in 1983 to a much more comprehensive piece of legislation, namely the Health and Social Services and Social Security Adjudications Act 1983⁹ (“the 1983 Act”) to increase the protection given to the aged.

In Singapore, much as the Act is to be welcomed, it must be realized that this is but a starting point. The Act and its attendant subsidiary legislation may not be as effective as they may seem to be at first blush, for the following reasons.

1. Establishments to which the Act applies

Firstly, the Act will not apply to all establishments in which the aged are housed. If an establishment falls outside the principal definition of “home for the aged”, it escapes the requirements of the Act.

Likewise, if an establishment falls within the exceptions in the definition of “home for the aged”, it will also not be governed by the Act. In this connection it is submitted that the exceptions are rather curiously worded.

The first exception refers to “premises which form part of any premises, including maternity homes, used or intended to be used solely for the reception, lodging and treatment and care of persons who require medical treatment or suffer from any disease”.

Presumably, this exception is intended to exempt establishments such as clinics, medical centres and private hospitals regulated under the Pri-

⁸ 1980, c. 7.

⁹ 1983, c. 41.

vate Hospitals and Medical Clinics Act¹⁰ and maternity homes regulated under the Nursing and Maternity Homes Registration Act¹¹.

The second exception extends to “premises used or intended to be used solely for the reception of, and the provision of nursing for, persons suffering or convalescing from any sickness, injury or infirmity”.

This wording very much resembles the definition of “nursing home” in the Nursing Homes and Maternity Homes Registration Act, and presumably is intended to exclude such nursing homes. The Nursing Homes and Maternity Homes Registration Act, however, confers fewer powers on the relevant Director (the Director of Medical Services) and is less comprehensive than the Act under consideration. It is submitted that assuming the division of supervision of the two types of homes, namely those which house the healthy aged and those which house only the aged sick, is necessary, the latter type of homes should be subject to the same, if not a stricter, standard of scrutiny as the former. This means that the Act could be amended either by deleting this exception to include the latter type of home within the Act, or that the Nursing Homes and Maternity Homes Registration Act be amended to ensure the same level of scrutiny for nursing homes as homes for the aged under the Act.

The Act also exempts from its rigours “premises used solely for the reception and care of dying or terminally ill persons”.

It is submitted that unless there is other legislation which protects the dying or terminally ill in the way that this Act does, this is an unsupportable exception.¹² The insertion of this exception seems to say that these persons are not to be accorded the same minimum standards of safety and hygiene as other aged, simply because they are dying or terminally ill. It would certainly be lamentable if this were the intention of Parliament. It is therefore submitted that this exception should be removed.

The last exception extends to “such other premises as may be prescribed”, presumably referring to the premises exempted by the Minister under section 19 of the Act.

As mentioned, apart from the express exceptions, it is also possible to escape the rigours of the Act if an establishment falls outside the principal definition of a “home for the aged”. Specifically, it seems that if an establishment has as its object the care of persons who are between the ages of 55 and 60, the Act would not apply to it, since on a literal reading, the definition of “home for the aged” includes only those establishments which house or profess to house those aged 60 years and above. It is sub-

¹⁰ Cap. 248, 1985 Rev. Ed., Singapore Statutes.

¹¹ Cap. 210, 1985 Rev. Ed., Singapore Statutes.

¹² The Nursing Homes and Maternity Homes Registration Act does not apply to “... places used for the reception of sick or dying persons licensed under by-laws made under the repealed Municipal Ordinance . . .”. Under Ordinance (Municipal) No. 135, by-laws were passed for such licensing. These were the Sick House By-Laws passed on 29th November, 1929, which deal with licensing of “sick receiving houses”. As far as it may be ascertained, these relatively sketchy by-laws have never been revoked or replaced, so it seems that they still govern the position on homes for the dying or terminally ill.

mitted that there is no real reason for excluding the former kind of home from the Act.

Moreover, section 3 (2) states that the Director may approve for admission into a "home" any person whose age is between 50 and 60 years old. This seems anomalous, since it would be possible for an establishment to have as its object the care of persons between 50 and 60, and be entirely exempted from the Act, whilst a home under the Act needs the approval under section 3 (2) to house persons between 50 and 60 years of age.

These issues arise because the definition of "homes for the aged" is dependent on an age component. It is submitted that it would be more logical to place all establishments set up with the object of caring for the aged (what amounts to such an establishment being decided by the Director) under the application of the Act, instead of defining "homes for the aged" in a manner which includes an arbitrary age limit as one of its criteria.

Alternatively, a definition which is simply not pegged to any age limit could be substituted. It is interesting to note that in the United Kingdom, the provisions on Residential Care Homes in the 1983 Act apply to:

*"any establishment which provides or is intended to provide, whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder".*¹³

In this connection, the British position was stated as follows:

*"We do not think that it is necessary or even prudent to define old age for the purposes of the registration system. We have a general conception of old age, but whether or not a person receives personal care in a residential home does not depend on the attainment of a specific age, but on his need for such care".*¹⁴

It is submitted that the above definition can be modified for the purposes of our Act to include only the words in italics, in view of the more limited ambit and purpose of our Act.

2. Issue, Revocation and Suspension of Licences

The Act uses the issue, suspension and revocation of licenses as leverage over those in charge of the homes.

Under section 5 the grounds for the refusal of a licence are:

- (a) that the applicant or any person employed or proposed to be employed by him in the management of the home or part thereof

¹³ Paragraph 1, Part I, Schedule 4 of the 1983 Act. The italics are that of the writer's.

¹⁴ *Per* the Under-Secretary of State of Wales, Stg. Com. B. in Current Law Annotated Statutes 1983, at Articles 41-62.

- is not a fit person, whether by reason of age or otherwise, to carry on or to be so employed at the home named in the application;
- (b) that for the reasons connected with the situation, construction, state of repair, accommodation, staffing or equipment, the home or any premises used in connection with the home are not fit to be used as a home for the aged; or
 - (c) that the way in which it is proposed to conduct the home is such as not to provide services or facilities reasonably required by old persons.

These ensure that only homes with suitable staff, facilities and services are licensed to operate.

Section 6 (1) (a) to (j) sets out the grounds on which a licence for a home may be revoked or suspended, which include the grounds in section 5 mentioned above.

Should the licence of a home be revoked or suspended for non-compliance with the Act, the Regulations or the terms of the licence, the object of the Act — presumably to prevent a sub-standard home from operating — appears to be achieved. Moreover, the Act ensures that the licensee is given an opportunity to “show cause” why the licence should not be suspended or revoked.¹⁵

However, it is submitted that the power to revoke a licence should be exercised with caution and the Director should rather compel the licensee to rectify, where possible, the shortcomings in the home, with as little disruption to its residents as possible. This is because on revocation of a licence the residents may not be able to find alternative accommodation easily, especially if they have no or insufficient funds to pay for the fees at a new home; those who are disabled may face even greater difficulty. However, in order for the Director to be able to so compel the licensee to comply, the Act should, it is submitted, provide that non-compliance with notices to rectify the faults or shortcomings would amount to an offence. An example of such curative action being required of the licensee is seen in section 15 (2), which empowers the Director to direct the licensee by notice to install or replace the apparatus, appliance, equipment or instrument found to be dangerous, detrimental or unsuitable under that section.

Conclusion

Despite the foregoing criticisms, the enactment of this piece of legislation was certainly a step in the right direction and it is hoped that the current interest in the problems of the aged will not wane.

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¹⁵ Section 6 (2) of the Act.

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