

Real estate law

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Bill 83 and the Voluntary Certification of Senior Citizens' Homes

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On December 10th, 2004, the Québec Government tabled Bill 83 titled “*Loi modifiant la Loi sur les services de santé et les services sociaux et d'autres dispositions législatives*” (“An Act to amend the Act respecting health services and social services and other legislative provisions”).¹ Since its tabling, Bill 83 has left many operators of senior citizens' homes (“SCH's”) wondering whether their daily operations will be affected by the impending enactment of this bill, and if so, to what extent.

1) Bill 83

Although the broader purpose of Bill 83 is the reorganization of the provision of health services in the province of Québec, Article 128 of Bill 83 introduces the notion of the voluntary certification of SCH's or, as they are referred to in the *Act Respecting Health and Social Services*² (the “Act”), “residences for the elderly”. Specifically, the intention of Article 128 is to improve the overall quality of the services provided at SCH's and in particular, to prevent further abuses the like of which have been revealed over the past few years, by establishing a series of minimum requirements and quality standards which operators of SCH's must adhere to as a precondition to being certified and thus receiving client referrals from public health establishments.

2) What is a SCH or “residence for the elderly”?

The Act defines a residence for the elderly as follows:

“A residence for the elderly is a congregate residential facility where rooms or apartments intended for elderly persons are offered for rent along with a varied range of services relating, in particular, to security, housekeeping assistance and assistance with social activities, except a facility operated by an institution and a building or residential facility where the services of an intermediate resource or a family-type resource are offered”.³

It should be noted that SCH's differ from nursing homes in that the former cater to a more autonomous clientele and thus, do not provide health or social services *per se*. It should also be noted that nursing homes or other residences offering health or social services are subject to a wider variety of regulatory requirements and, unlike SCH's, are subject to mandatory certification.

3) Current regulatory limitations on SCH's

Currently, SCH's located in the province of Québec need not be certified by a regulatory authority. What is required, is that the operator of a SCH provide the Regional Board (i.e. the entity presently authorized to oversee

the operation of SCH's) with the name and address of the operator, the address and physical description of the building, a list of all relevant permits held by the operator and a description of the services provided at the SCH. However, SCH's may only be established in zones where such use is permitted under municipal zoning by-laws. In addition, municipalities may impose limitations on the types of buildings in which SCH's may be operated and require that specific fire prevention and construction standards be respected.

4) Voluntary certification

Bill 83 proposes to dramatically alter the existing regulatory framework for participating SCH's by (i) replacing the Regional Boards with the "Agence de la santé et des services sociaux" (the "Health and Social Services Agency") (the "Agency"), which will have the broader mandate of managing and overseeing the provision of health and social services in a given geographic area as well as having the authority to inspect participating SCH's and revoke or suspend certification, and (ii) by authorizing the Agency to issue "certificates of conformity" to SCH's seeking such certification.⁴ The benefit of certification will be the increase in the client base of participating SCH's, as only certified SCH's will be eligible to receive client referrals from public health establishments.

To be certified by the Agency, a SCH must satisfy a series of socio-sanitary requirements to be established by government regulation and receive a certificate of recognition from any organization authorized to oversee the certification process.

Once a certificate of conformity is granted, the Agency will be entitled to revoke or suspend the certificate if, in the opinion of the Agency, the SCH fails to respect the requirements established by regulation. In such event, the SCH shall no longer be eligible to receive client referrals from public health establishments.

5) Assessment and conclusion

Although the advantages of voluntary certification include the non-coercive implementation of minimum quality standards and the expansion of the client base of participating SCH's, the regime of voluntary certification established under Bill 83 has been severely criticized by the Association des Résidences et CHSLD privés du Québec (an association representing over 500 SCH's and nursing homes in the province of Québec) for: 1) likely increasing average rental rates of participating SCH's (by not granting operators of SCH's tax benefits or other means of absorbing the costs of conforming to certification requirements), and: 2) encouraging conformity to the public health model and thereby preventing product and service innovation as well as decreasing the availability of specialized services. As higher priced SCH's generally do not rely on public health establishments for client referrals, their daily operations will likely not be greatly affected by Article 128 of Bill 83.

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- 1) See: <http://www.assnat.qc.ca/eng/37legislature1/Projets-loi/Publics/04-a083.htm>. No date has been set for the enactment of the bill and the bill is still subject to modification;
 - 2) R.S.Q., c. S-4.2;
 - 3) Section 346.0.1 of the Act;
 - 4) Section 346.0.4. "To obtain a certificate of compliance, an operator of a residence for the elderly must apply in writing to the agency for the territory where the residence is situated, using a form provided by the agency, and meet the following conditions:
 - (1) comply with the health and social criteria determined by regulation;
 - (2) hold an assessment certificate issued by an organization recognized by the Minister."