

Risks and Issues relating to COVID-19: Seniors' Housing

Part Two: RECOVERY AND GROWTH OPPORTUNITIES FOR SENIORS' HOUSING OPERATORS

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Introduction

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Meet our speakers



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Private Sector Senior Housing Operators

Facilities and Practices – Tested by COVID-19

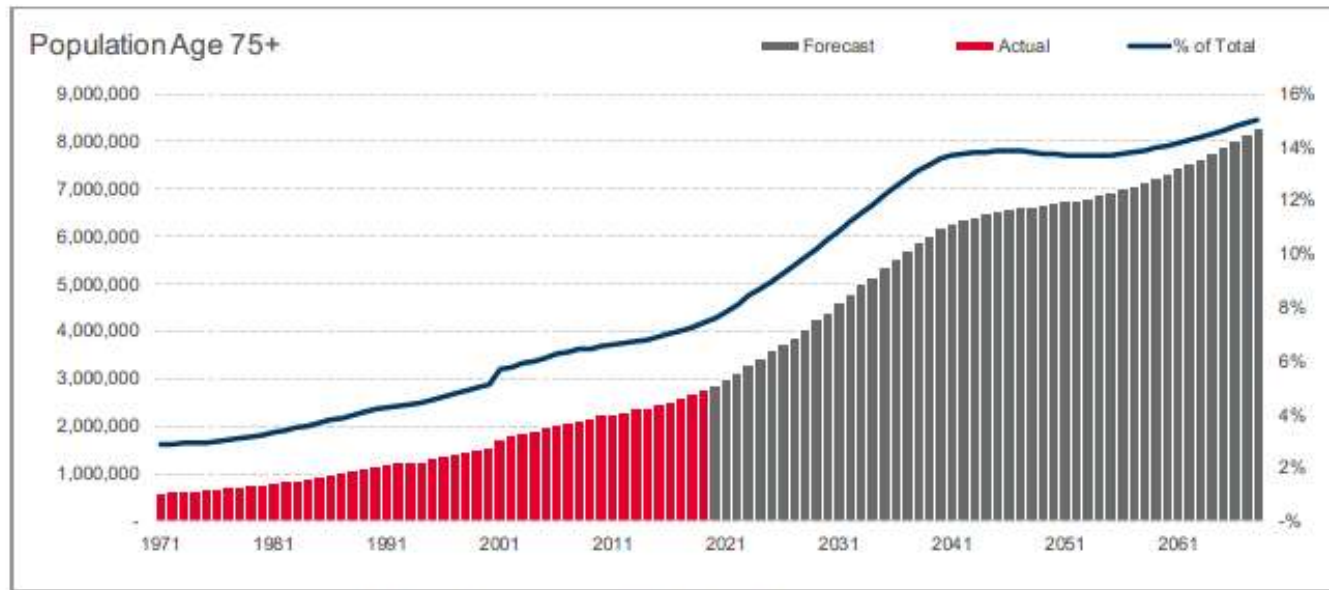
- The COVID-19 outbreak has put a spotlight on all seniors care facilities
- 4 out of 5 deaths in Canada have been linked to senior care facilities
- Nearly 10% of all seniors care facilities nationwide have reported coronavirus cases
- Seniors homes across the country are run by the for-profit sector (37%), government (32%) and not-for-profit (31%).¹
- There has been no apparent connection between ownership style and coronavirus fatalities.
- COVID-19 fatality rates are largely explained by older design standards and the number of beds per area.²

1. Source: Canadian Institute for Health Information

2. Source: For-profit home and the risk of COVID-19 outbreak and resident deaths in Ontario, Canada (Nathan M. Stall MD; Aaron Jones MSc; Kevin A. Brown MSc, PhD; Paula A. Rochon MD, MPH; Andrew P. Costa PhD).

Seniors Housing – A Stable Asset Class

- Aging population and the impact on demand



Source: StatsCan, Tables 17-10-0005-01 and 17-10-0057-01 Projection scenario M4: medium-growth

- Seniors housing is a needs driven demand
- Valuers and lenders – cautious but seeing seniors housing as a stable asset class

Long-Term Care Facility Financings

Gary Rose

Long-Term Care Facility Financings

Credit Agreement Basic Structure

Credit Facilities Description

Repayment and Prepayment

Interest Rates and Fees

Security

Funding Conditions



Long-Term Care Facility Financings cont'

- Representations and Warranties
- Covenants
 - Positive
 - Negative
 - Financial
 - Reporting
- Events of Default
- Remedies on Default
- Miscellaneous

Specific Long-Term Care Facility Provisions

Specific Long-Term Care Facility Provisions

Security

Assignment of material contracts (e.g., master services agreement with health authority)

Multi-party agreement in respect of health authority contracts

Funding Conditions

Health authority funding agreements in place

Funds (or a portion thereof) in respect of funding agreements received

Representations and Warranties

Material contracts in place and in good standing

Specific Long-Term Care Facility Provisions cont'

Covenants

Comply with health authority agreements and grant funding agreements

Provide lender with updates to health authority agreements when received

Provide access to provincial health records

Provide copies of health authority reviews

Not to amend health authority agreements

Events of Default

Termination of health authority agreements

Pandemic-Related Issues

Pandemic-Related Issues

Ministerial Orders related to pandemic

Suspension of master services agreement and multi-party agreement

Health authority takes control over facility and operates or appoints third party to operate

Settle, renegotiate, extend or compromise indebtedness

Collect rents and profits in respect of facility



Pandemic-Related Issues cont'

New Covenants related to pandemic

General tightening of covenants

Covenants related to contingency/response plans dealing with:

- Pandemic and influenza outbreaks

- Personal protective equipment supplies

Covenants related to the appointment of a monitor in during pandemic/influenza outbreak

More robust communication rights between the lender and the health authority

The Future of Long-Term Care Facility Financing

Construction

Jana Mansour

Existing construction projects and COVID-19: What have we learned so far?

1. Force Majeure claims
2. Change in Law claims

New Contracts:

1. Acknowledging the reality of COVID-19
2. Definition of Force Majeure
3. Obligation to mitigate
4. Anticipating future disruptions from COVID-19 or similar events
 - a) Contract to remain in force
 - b) Termination rights
 - c) Assignment or novation of subcontracts

CCDC 2 Stipulated Price Contract

GC 6.5.2

If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, then the *Contract Time shall be extended* for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.

CCDC 2 Stipulated Price Contract

GC 7.2.2

If the *Work* is **suspended or otherwise delayed** for a period of **20 Working Days** or more under an **order of a court or other public authority** and providing that such order was not issued as the result of an act or fault of the *Contractor* or of anyone directly or indirectly employed or engaged by the *Contractor*, the **Contractor may**, without prejudice to any other right or remedy the *Contractor* may have, **terminate the Contract** by giving the *Owner Notice in Writing* to that effect.

CCDC 2 Stipulated Price Contract

GC 6.5.3

If the *Contractor* is delayed in the performance of the Work by:

1. Labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound),
2. Fire, unusual delay by common carriers or unavoidable casualties
3. Abnormally adverse weather conditions, or
4. **Any cause beyond the *Contractor's* control** other than one resulting from a default or breach of *Contract* by the *Contractor*,

then **the *Contract Time* shall be extended** for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The ***Contractor* shall not be entitled to payment for costs** incurred by such delays unless such delays result from actions by the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly.

CCDC 2 Stipulated Price Contract

GC 10.2.7

If, subsequent to the time of bid closing, **changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the Work**, either party may **submit a claim** in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

CCDC 2 Stipulated Price Contract

GC 6.6.2

Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:

1. Take all reasonable measures to **mitigate any loss or expense** which may be incurred as a result of such event or series of events, and
2. **Keep such records as may be necessary to support the claim.**

Opportunity and Recovery from a Transactional Perspective

Nicole Bacsalmasi

Opportunities for Growth

With the new COVID-19 environment, private sector seniors facilities may see new strategic areas for growth in the sector.

- Third-Party Management Contracts
 - Risks: term length could be set by regulator, availability for indemnification, not full control
 - Benefits: opportunities for economies for scale, increased income
- Joint Venture/Partnerships
 - Site specific
 - introduction of capital to existing portfolio for a majority ownership position.
 - ROFR Rights, Management / Partnership Contracts
 - Ensure good working relationship
- Positioned to acquire additional portfolios and assets
 - Change to the way homes are valued?
- Sourcing capital from hedge and pension funds (still allowing the provider to be the manager)
 - Capital for renovations, increase size, number of beds and single occupancy rooms

Opportunities for Recovery

- Open lines of communication – banks, regulators, associations
- Creating opportunities to exit – package assets for sale
- Re-design “older” facilities (with shared rooms and shared bathrooms) to be mindful of spread of possible future pandemics
- Working with other operators to purchase bulk PPE or spin off company to import PPE
- Consider employment scope and whether ratios of nurses to patients can be adjusted

Potential Opportunities: Digital Transformation

Kirsten Thompson

What we are seeing

1. Person-centric design

- Clunky pendants and personal emergency response services (PERS) devices are giving way to good-looking, well-designed products that also happen to be functional.
- **Smart jewelry:** companies like WiseWear now provide passive health monitoring that requires no input from older adults beyond wearing the jewelry.
- **Non-wearable health trackers:** Ally monitors the health and well-being of older people in their homes.

What we are seeing

2. Disappearing user interfaces

- User experience is crucial when designing for older adults. Complex instructions, mice, touchpads, and keyboards can be challenging for those with dexterity issues.
- **Emerging voice interfaces:** Amazon's Alexa represent a new interaction platform on which we are starting to see both third-party vendors and long-term care providers build solutions (e.g., menus).
- **Gesture-based solutions:** enable users to control appliances and other devices inside their smart home with a simple hand movement (e.g., Reemo, Myo)
- **Smart clothing:** embeds sensors to passively monitor vital signs and provide subtle notifications (e.g., Siren Care, Ohmatex).

What we are seeing

3. Greater recognition of social determinants of health

- The business case for senior-focused technologies is increasingly positioned in terms of the potential benefits to the healthcare system. Health plans and healthcare systems seeking to reduce the cost of care for patients are deepening their focus on social determinants of health like social inclusion, transportation, and access to healthy foods.
- **Accessible care:** companies such as CareMore are partnering with on-demand ride programs like Lyft to help patients get to the care they need when they need it.
- **Food delivery and socialization:** Johns Hopkins Bayview Maryland Health System partnered with Meals on Wheels to scale delivery throughout Central Maryland via financing from social impact bonds.

What we are seeing

4. Emergence of aggregated services to connect the silos

- **Tech-enabled concierges** provide “person-centric” solutions, bringing services to the older adult or their family, rather than sending the family in search of them.
- Through a user-friendly app like the Cubigo platform or an on-demand service like Envoy’s on-call local concierge assistants, seniors can find high-quality local service providers to help them with tasks and errands.
- Concierges remove the burden of older adults having to do the tasks themselves or manage multiple service providers or apps, or rely on family caregivers to run errands.

What we are seeing

5. Consumerization and specialization of robots

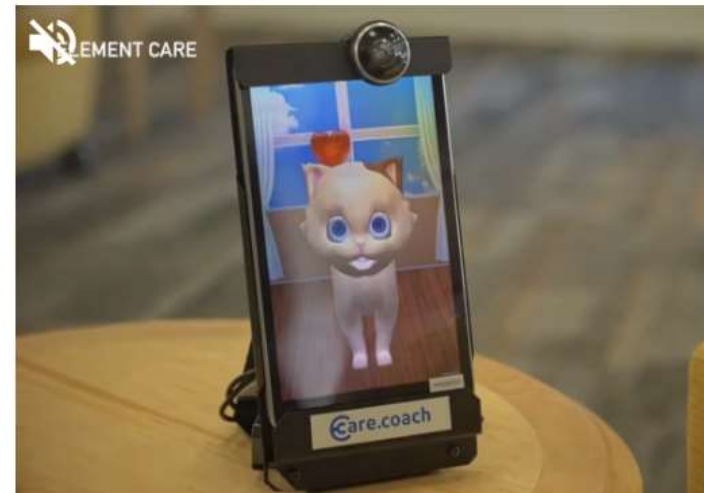
- **Robots!**
 - Successful robotic applications take away less desirable tasks and augment human interventions, combining high-tech with high-touch.
 - Not one size fits all, but rather are designed for a specific purpose.
 - There are robots that provide an emotional connection with older adults as companions (Jibo, Catalia Health)
 - There are others that are more focused on efficiency improvements.
- The next wave is likely robots helping in the “back of the house” (e.g., laundry, meal prep), which is already happening in hospitality and healthcare (hospitals).



What we are seeing

6. Artificial intelligence (AI) augmented caregiving

- We are beginning to see the emergence of solutions that combine artificial intelligence and avatars to provide cost-effective, virtual care for older adults.
- **Artificial intelligence solutions:** CareAngel's virtual caregiving assistant, which provides a daily phone call—can help augment family caregivers who are sometimes not able to provide the necessary care and oversight.
- **Avatars:** Sense.ly and IDAvatars provide in-home interactions to support adherence to care plans and triage potential issues early.
E.g., Sox the cat
- **Point of care:** Caring in Place and guided decision making (e.g., Roobrik) are augmenting care and support for older adults and caregivers alike.



What we are seeing

7. Data sharing and collaboration

- New collaborations are forming between providers and existing companies in order to better serve older adults.
- For instance, CareRides is a partnership between CareLinx and Lyft that makes Lyft's ride-sharing service available through CareLinx's mobile application, thus enabling their elderly customers to easily order a car to get to doctor's appointments, run errands, and visit friends and family with the assistance of a professional caregiver

What we are seeing

8. Increased recognition and support for family caregivers

- Forward-thinking employers are introducing formal programs that explicitly support elder care. They vary in approach:
 - Specifically targeted content (Daily Caring)
 - Local support communities (Daughterhood)
 - Coaching and care coordination (Cariloop, Care.ly, Tending)

Why does this matter? Isn't this just business as usual?

No – there are subtle changes to the core business that introduce legal and revenue risks. Organizations rapidly moving in to these areas may not be aware of these risks, because they have never been part of their core business:

- **New business model**

- Do you have a coordinated approach (a “**data strategy**”) that optimizes revenue and reduces risk by virtue of having aligned your data management practices with regulatory requirements **and** your strategic goals?

- **New types of vendors/partners**

- Do you have written agreements with each new vendor/partner? Do they have:
 - a consistent, considered approach to risk acceptance?
 - appropriate limitation of liability provisions?
 - appropriate indemnification provisions?
 - data protection provisions that are specific and appropriate to the long-term care context?
 - cybersecurity provisions?

Why does this matter? Isn't this just business as usual?

- **New cybersecurity exposure**
 - Most tech innovation will require system access, thereby **increasing attack surfaces**
 - Increased **volume** and **sensitivity** of information (PII, PHI, payment card info, etc.) makes you a more attractive target for malicious actors)
 - Vulnerable population of users susceptible to phishing and other social engineering attacks
 - You are only as strong as your weakest connected device. Due diligence!

Major Topic	Supporting Documents	What's In the Document
Information Security Program	Information Security Policy	Guide to developing an enterprise information security policy; objectives of the policy, key policy requirements and internal processes leading to policy approval.
	• Information Security Policy Checklist	High level information security policy requirements for complex health care organizations.
	• Sample Information Security Policy	Sample policy that sets security objectives, assigns responsibilities and demonstrates the organization's commitment to protecting health information.
	Roles & Responsibilities	Description of various organizational roles that have a subset of security responsibilities.
	• Sample Information Security Roles & Responsibilities	High level list of security responsibilities that should be part of typical IT roles in an organization.
	Confidentiality Agreements	Role and benefits of using confidentiality agreements in protecting health information.
	• Employee Confidentiality Agreement Checklist	List of requirements that should be included in a Confidentiality Agreement between the health organization and employees.
	• Third Party Confidentiality Agreement Checklist	List of requirements that should be included in a Confidentiality Agreement between the health organization and third parties such as consultants or service providers.
Information Security Risk Management	Program Assessment	Guide to assessing the strengths and weaknesses of a complete security program.
	• Information Security Program Assessment Checklist	List of recommended components of a comprehensive, standard-based information security program.
	Risk Management Methodology	Definition of risk and description of a structured approach to identifying and assessing risk and implementing controls for the treatment and ongoing monitoring of risk.
	Risk Assessment	Guide to identifying risks and assessing risk magnitude.
	• Sample Assets and Assets Categories	List of common physical and logical (informational) assets that can be found in a complex health care organization.
	• Assets Registry - Template	Template spreadsheet to identify and keep track of physical and logical informational assets; examples included.
	• Threat / Vulnerability Catalogue	Catalogue of common security threats and vulnerabilities that may create information security risks.
Additional Material	Risk Treatment	Guide on management options in responding to identified risks.
	• Sample Risk Treatment Planning Template	Sample spreadsheet tool to identify action items planned to reduce risk, responsible parties and timeframe for execution.
	Risk Monitoring	Guide on continuous monitoring of the environment to ensure proactive detection of risks and implementation of preventive safeguards.
	Quick Reference Guide	A simplified guide to security best practices that cover key components of an enterprise information security program. Contains best practices both for end users and for information security managers.
	Secure Destruction of PI / PHI	Fact Sheet created by Information and Privacy Commissioner of Ontario, providing best practices on destruction of personal information.

Why does this matter? Isn't this just business as usual?

- **New types of data and increased volume of data**
 - New sources and types of data:
 - **personal information** triggers federal and provincial privacy laws, in the private sector and public sector
 - **personal health information** triggers health privacy laws, health regulatory obligations (e.g., College requirements and professional practice standards re record keeping, file transfers, confidentiality, etc.)
 - an organization's representations about its data handling practices may trigger **Competition Law risk** (i.e., misleading representations)
 - Our team assists with compliance issues to reduce risk and mitigate against director and officer liability, including **Privacy Audits and Privacy Impact Assessments**, as well as the management of health information and personal information
 - Is your Privacy Officer up to the task of managing these projects, new data types, new relationships, and different regulatory contexts? (if not – see **Dentons virtual privacy officer – VPO**)

Questions?



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