

LEGISLATIVE UPDATE

August 2022

Backgrounder

Bill 7: More Beds, Better Care Act, 2022

Context

On August 18, 2022, the provincial government introduced [Bill 7: More Beds, Better Care Act, 2022](#) (Bill 7).

The tabling of Bill 7 coincided with the provincial government's announcement of a five-point plan named "A Plan to Stay Open: Health System Stability and Recovery", meant to support Ontario's health care system and is the second phase to their earlier "[A Plan to Stay Open](#)" announced in March 2022. The provincial government has announced that this second phase, will bolster the health care workforce, expand innovative models of care and ensure hospital beds are there for patients when they need them. For further information, please refer to the provincial government's [news release](#).

If passed, Bill 7 will amend the [Fixing Long-Term Care Act, 2021 \(FLTCA\)](#), and will include provisions related to alternative level of care (ALC) patients and would allow certain acts to be performed without consent, provided that reasonable efforts had been made to obtain consent. Bill 7 would also make consequential amendments to the [Health Care Consent Act, 1996](#).

Key Highlights

Bill 7 proposes to make legislative changes related to patients designated as ALC patients in the following areas:

- Definition of an ALC Patient
- Consent
 - Acts that may be performed without consent
 - Reasonable efforts to obtain consent
 - Application of s 49-54 of the FLTCA
 - Physical Transfer of ALC patients
 - Future regulations
- ALC Patient Assessment
- LTC Licensee Obligations
- Bill of Rights
- Amendments to the *Health Care Consent Act, 1996*

I. Definition of ALC Patient

Bill 7 introduces definitions for the terms "ALC patient" and "attending clinician", as they relate to one another.

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“Attending Clinician” is defined as a person authorized under the *Public Hospitals Act* (PHA) to issue a discharge order for the ALC patient.

“ALC patient” is defined as someone who (1) occupies a bed in a hospital under the PHA; and (2) has been designated by an attending clinician in the hospital as requiring an alternative level of care because in the clinician’s opinion, the person does not require the intensity of resources or services provided in the hospital care setting.

Most hospitals in Ontario use a standardized Provincial Alternative Level of Care (ALC) definition to designate patients, which was developed in consultation with stakeholders across the continuum of care and adopted by Ontario Health¹. The current provincial standard defines ALC patient as: “When a patient is occupying an inpatient bed in a hospital and does not require the intensity of resources/services provided in this care setting, the patient must be designated ALC at that time by the physician or her/his delegate.”²

The proposed amendment under Bill 7 differs from the current standardized definition by using the term “attending clinician” as opposed to “physician or her/his delegate”. As defined under Bill 7, “attending clinician” could include a broader scope of individuals, as the PHA allows the following persons to make a discharge order: attending physician, registered nurse, midwife, or attending dentist (if an oral and maxillofacial surgeon).³

II. Consent

Acts that may be performed without consent

If passed, Bill 7 will introduce provisions under the FLTCA that allow certain actions to be performed without the consent of the ALC patient. A placement co-ordinator, with or without a request from an attending clinician, may do the following actions:

- Determine the ALC patient’s eligibility for admission to a long-term care (LTC) home;
- Select a LTC home or homes for the ALC patient, *in accordance with the geographic restrictions prescribed in the regulations* (emphasis added);
- Provide the licensee of the LTC home with the assessments and information set out in the regulations, including personal health information (PHI);
- Authorize the ALC patient’s admission to a home; and,
- Transfer responsibility for the placement of the ALC patient to another coordinator

Reasonable Efforts to Obtain Consent

Under Bill 7, the above-noted acts may only be performed without consent if reasonable efforts have been made to obtain the consent of the ALC patient or their substitute decision maker (emphasis added).

Application of s. 49-54 of FLTCA

Sections 49 to 54 of the FLTCA outlines requirements for eligibility, assessment, and admission to a long-term care home.

¹ [Ontario Health, Alternative Level of Care \(ALC\) Reference Manual, April 2021](#)

² [Ontario Health, Alternative Level of Care \(ALC\) Reference Manual, April 2021](#), s. 1.3

³ *Public Hospitals Act*, Regulation 965, s.16(1)

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If consent has been provided to the above-noted acts, then the relevant sections of 49 to 54 of the FLTCA and the regulations, apply to the stages of the process to which they have consented to.

If consent is not provided, then sections 49 to 54 of the FLTCA do not apply. The above-noted acts shall be performed in accordance with the regulations.

Physical Transfer

Bill 7 does not permit any person to restrain or to physically transfer an ALC patient to a LTC home without the consent of the ALC patient or substitute decision-maker.

Future Regulations

Bill 7 would authorize the provincial government to develop regulations related to the FLTCA amendments noted above. Specifically, the provincial government would be able to make regulations:

- Prescribing and governing any procedure that must be followed in performing the actions;
- Specifying any requirement, criteria, restriction, or condition;
- Modifying the application of any provision of the FLTCA or the regulations;
- Providing exemptions;
- Governing the collection, use and disclosure of PHI, which may include prescribing additional persons who can collect, use or disclose PHI; and,
- Modifying the application of sections 49 to 54 of the FLTCA, with respect to ALC patients who have consented.

III. ALC Patient Assessment

Bill 7 allows a physician, registered nurse or person described in section 50(5)(3) of the FLCTA (registered nurse, registered social worker and any person provided for under the regulations) the ability to conduct an assessment of the ALC patient for the purpose of determining the ALC patient's eligibility for admission to a long-term care home.

IV. Long-term Care Licensee Obligations

Under the amendments in Bill 7, a LTC home must:

- Review the assessments and information provided by the placement co-ordinator regarding the ALC patient;
- Approve the ALC patient for admission as a resident of the home, unless a condition for not approving the admission under ss. 51(7) is met; and,
- Admit the approved ALC patient after (a) the placement co-ordinator has determined the patient's eligibility (b) a bed becomes available and (c) the placement co-ordinator has authorized the patient's admission to the home (emphasis added).

V. Bill of Rights

Bill 7 specifies that the amending provisions and their related regulations shall not be interpreted or construed as being inconsistent with the Resident's Bill of Rights.

Under the amendments, an ALC patient may however apply to the Health Services Appeal and Review Board for a review of a determination of ineligibility made by a placement coordinator, and the Board would be required to deal with the appeal in accordance with section 59 of the FLTCA. As it is

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currently written, the FLTCA outlines appeal rights for “applicants”, however the amendments will incorporate the newly defined “ALC patient.”

VI. Health Care Consent Act

Bill 7 includes consequential amendments to the *Health Care Consent Act, 1996* (HCCA). The changes specify that section 47 relating to the admission of an incapable person to a care facility as a result of a crisis (the HCCA Crisis Admission Provisions), does not apply to an ALC patient’s admission under Bill 7’s amending provisions of the FLTCA.

Timeline and Next Steps

Bill 7 is currently before the legislature for second reading. If passed, Bill 7 would come into force on the day it receives Royal Assent. However, the substantive amendments including those related to ALC patients, consent and HCCA and others mentioned above, would come into force on a day to be named by proclamation of the Lieutenant Governor.

At this time, the OHA is seeking member feedback on the proposed amendments as it moves through the Legislature. We ask that you please submit any comments, questions or concerns related to Bill 7, to Lindsay Carbonero, Senior Legal Advisor at lcarbonero@oha.com by no later than September 2, 2022.

The OHA will continue to monitor the status of Bill 7 and inform you of any developments. If you have any questions, please reach out to Ms. Carbonero at the email address noted above.