

LEGISLATIVE UPDATE

April 2022

Backgrounder

Fixing Long-Term Care Act, 2021 and Ontario Regulation 246/22

Context

On April 11, 2022 the new [Fixing Long-Term Care Act, 2021 \(FLTCA\)](#) and its general regulation [O. Reg 246/22](#) (Regulation) came into force. This will repeal and replace the *Long-Term Care Homes Act, 2007* (LTCHA) and revoke O. Reg 79/10.

The new framework comes as a result of consultations with the public, health care sector and most notably the Long-Term Care COVID-19 Commission and Auditor General. The framework is designed to advance three priorities:

1. Improving staffing and care;
2. Protecting residents through better accountability, enforcement and transparency; and,
3. Building modern, safe, comfortable long-term care homes for Ontario's seniors.

The provincial government is marking this legislation as the first significant legislative reform for the long-term care sector in over a decade.

Given the transformative nature, the provincial government has indicated that they will be rolling out the new regulatory changes in a phased approach, addressing the most urgently needed measures first.

For further information on FLTCA and the regulation, please refer to the provincial government's previous [news release](#) regarding FLTCA. You can also find additional Ministry fact sheets regarding the regulation at www.ltchomes.net

Key Highlights of the New Framework

April 11, 2022 kicked off the first phase of the regulatory changes under the FLTCA framework. In phase one, the provincial government is focusing on the following areas:

- i. Resident Rights and Caregivers (expansion of Bill of Rights)
- ii. Hours of Care (establishes provincial targets for direct care)
- iii. Infection Prevention and Control (clarifies roles and requirements)
- iv. Continuous Quality Improvement (defines requirements)
- v. Streamlining Processes (aimed to reduce red tape in decision making)
- vi. Emergency Planning (expands requirements)

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- vii. Staffing (clarifies role of Medical Director)
- viii. Accountability and Enforcement (Expands enforcement mechanisms and complaints process)
- ix. Palliative Care (requires the integration of palliative care philosophy)
- x. Special Circumstances – Pandemic and Hospital Admissions

I. Resident Rights and Caregivers

The FLTCA modifies the language in the Residents' Bill of Rights to align with the *Ontario Human Rights Code* more closely. It also expands the rights of residents to include support from their caregivers and the ability to receive assistance in contacting them, as well as defining the role of "caregiver" in the Regulation. The FLTCA also outlines the right to be provided care and services based on a palliative care philosophy.

The Regulation also requires all long-term care (LTC) homes to have a visitor policy that ensures caregivers continue to have access to homes during an outbreak, subject to restrictions from the Chief Medical Officer of Health.

Additional rights and benefits include the introduction of a new requirement for air conditioning in resident bedrooms as well as increasing menu planning flexibility for residents.

II. Hours of Care

The FLTCA sets out provincial targets to increase direct care for residents. The provincial government has committing to providing:

- a system target average of four hours of direct care by registered nurses (RN), registered practical nurses (RPN) and personal support workers (PSW) per resident per day by March 2025;
- a target average of 36 minutes of care by allied health care professionals (AHP) by March 2023.

The legislation also establishes interim annual targets and requires public reporting by the Minister on the progress of those targets, and a plan if targets are not being met.

The interim annual targets are set out as follows:

- By end of March 2022: three hours of care by RNs, RPNs and PSWs and 33 minutes of AHP care.
- By end of March 2023: three hours and 15 minutes of care by RNs, RPNs and PSWs and 36 minutes of AHP care.
- By end of March 2024: three hours and 42 minutes of care by RNs, RPNs and PSWs and 36 minutes of AHP care.
- By end of March 2025: four hours of care by RNs, RPNs and PSWs and 36 minutes of AHP care.

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On March 29, 2022, the provincial government announced that they intended to make regulations under Bill 106, if passed, to make the \$3 wage enhancement for personal support workers permanent. Bill 106 is currently before the Standing Committee on Finance and Economic Affairs in the Legislature. The OHA will continue to monitor for developments regarding Bill 106 and its potential impact for members under the new FLTCA framework.

III. Infection Prevention and Control (IPAC)

The legislation and Regulation make reference to an evidence-based Standard for IPAC, which will be issued under the FLTCA. Licensees will be required to comply with the Standard, which includes sections on PPE, training and immunization and screening.

The FLTCA also includes a new requirement to have an IPAC lead with specified qualifications who will oversee, implement, and maintain the home's IPAC program. The IPAC lead will have a minimum required hours of work per week depending on size of the LTC home. The hours are outlined in the Standard.

IV. Continuous Quality Improvement

The FLTCA requires that every licensee implement a continuous quality improvement initiative which includes the requirement to:

- establish an interdisciplinary quality committee within six months after coming into force (the required composition is outlined in the Regulation);
- ensure the initiative is coordinated by a designated lead;
- prepare an interim report for the 2022-2023 fiscal year within three months after the coming into force of the application section of the Regulation and publish the report on its website;
- prepare a report for each fiscal year and publish it on its website; and,
- maintain a record of the individuals who participated in the evaluations of improvements.

The legislation also provides the ability to the Minister to establish a Long-Term Care Quality Centre.

V. Streamlining Processes

In response to the previous framework's lack of flexibility, the FLTCA adds in the ability for the Minister to make a policy regarding Minister's Determinations. Rather than the licence approvals process under the previous framework, for select requests the determinations can be made via policy rather than individual licensing requests.

Other changes aimed at reducing red tape include:

- Removal of previous notice requirements prior to licence expiry;
- Enabling the Director to make decisions regarding management company approvals; and,
- Generalizing the definition of design manuals so that the Regulation does not need to be amended each time design manuals are updated.

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VI. Emergency Planning

The new legislation expanded the list of emergencies that require a plan (e.g., boil water advisories, extreme weather). It specifies components for required emergency plans related to outbreaks of a communicable disease. It also requires a LTC home to post its emergency plans on its website.

Licensees' emergency plans that were compliant with the LTCHA will be deemed to meet the requirements around emergency plans for three months after the coming into force of the section.

VII. Staffing

Screening

The FLTCA requires enhanced screening measures for staff, boards of directors and volunteers. Screening will now prohibit the hiring of staff if they have been convicted of offences or if found guilty of an act of professional misconduct. The Regulation sets out the specific offences and acts of misconduct that would prohibit the hiring of an individual.

For individuals who were hired or accepted before the Regulation came into force, licensees will have three months to ensure these individuals are screened in accordance with the requirements.

Medical Directors

The required terms of the contract between the licensee and the Medical Director within a LTC home have been updated to include specified training and a required minimum number of hours on site each month. The Medical Directors' responsibilities have been updated to include:

- Advising on and approving clinical policies and procedures;
- Communicating relevant medical policies and procedures to attending physicians and NPs;
- Attending interdisciplinary committees and quality improvement activities; and,
- Providing oversight of resident clinical care in the home.

VIII. Accountability and Enforcement

Enforcement Mechanisms

Suspensions

The legislation allows the Director and Minister to suspend a licence and take over a LTC home without having to revoke the licence and close the home.

The change allows a LTC home supervisor to be appointed by the Minister to occupy and operate the home for a specified period of time or until the revocation of the licence becomes effective. A supervisor may be an employee of the Ministry or an agent or contractor acting under the authority of the Ministry.

If appointed, the supervisor has all the powers of the licensee to manage, operate and administer the home, but the legislation provides that they must also allow the Ministry full control of the home.

Temporary Manager

The legislation also expands the grounds under which the Director may order a licensee to retain a manager, for example on a temporary basis to manage specific operations such as IPAC, financial or clinical operations or to manage the entire operations of the LTC home.

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The Director may make such an order in cases where the licensee has been non-compliant with the legislation or where there are reasonable grounds to believe the licensee cannot or will not properly manage the home without assistance. This power can now also be used in emergency situations, such as an outbreak or if circumstances are present that are harmful to the safety and welfare of patients. Any order for an interim manager, would be at the licensee's expense.

Fines

The legislation doubles the fines on conviction of an offence for individuals and corporations, as follows:

- Individuals: \$200,000 for first offence; \$400,000 for the second;
- Corporations: \$500,000 for first offence; \$1,000,000 for the second.

Non-Compliance

The FLTCA introduces the ability for an inspector to address low-risk instances of non-compliance without having to take compliance action, such as a written notification.

The legislation also removes Voluntary Plans of Correction as a possible remedy.

Whistleblower Protection

The FLTCA expands protection to information disclosed to a resident and family council and any other personnel of the Ministry.

Complaints

The FLTCA has updated the requirements for licensees with respect to complaints in two ways:

1. A licensee must forward all complaints that allege harm or risk of harm to one or more residents, including but not limited to physical harm, immediately to the Director.
2. A licensee must provide contact information for the Ministry's Long-Term Care Family Support and Action Line and for the Patient Ombudsman to the complainant in response to the complaint.

Additionally, licensees must post information in their LTC home about the complaints procedure for the home and also provide it to residents upon admission.

IX. Palliative Care

The Regulation sets out a new palliative care requirement and requires every licensee to ensure:

- The interdisciplinary assessment of a resident's palliative care need for their plan of care considers their physical, emotional psychological, social, cultural, and spiritual needs;
- That based on that assessment, an explanation of the palliative care options that are available is provided; and,
- The palliative care options made available must include at a minimum, quality-of-life improvements, symptom management, psychosocial support and end of life care (if appropriate).

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X. Special Circumstances - Pandemic and Hospital Admissions

As a result of the pandemic, the provincial government had made amendments to the admissions and placement provisions in O. Reg 79/10 under the *Long-Term Care Homes Act*, to expedite the placement process for hospital patients awaiting long-term care home placements. The amendments required the placement coordinator to select a LTC home if it became available for placement, even if the applicant was on a waiting list for other homes, as long as the applicant consented.

The new Regulation includes a transitional provision to allow for the same. However, this section will be revoked on October 11, 2022. The replacement provision does not provide explicit authority to a placement coordinator to select a home. However, it does allow for placement co-ordinators to handle the application process, permitting they have received consent from the applicant.

The Ministry of Long-Term Care recently indicated that the co-payment waiver program would be retired on the day the FLTCA comes into force. This program was designed to support residents who agreed to move to a LTC home that was not their first choice and waived the co-payment for the resident until offered a spot in their first-choice home.

Timeline and Next Steps

Most of the requirements under the new framework will come into force on April 11, 2022. However, certain provisions have delayed compliance dates ranging from one month to three years.

The provincial government has indicated that further proposals and consultations will take place in Fall 2022. The next phase of regulatory changes will be focused on building operational capacity to support successful implementation.

The OHA will continue to monitor developments related to FLTCA and its regulation. Members are welcome to provide feedback at any time.

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