Ontario Hospital Association

200 Front Street West, Suite 2800
Toronto, ON M5V 3L1
416 205 1300
oha.com

LEGISLATIVE UPDATE

April 2022

Backgrounder
Ontario Regulation 187/22
The new Home and Community Care Services Regulation

Context

On February 25, 2020, the provincial government introduced Bill 175, *the Connecting People to Home and Community Care Act, 2020* (Bill 175). The Bill amends the *Connecting Care Act, 2019* (CCA) and provides a new framework that aims to modernize home and community care service delivery in Ontario. Bill 175 received royal assent on July 8, 2020.

The related Home and Community Care Services Regulation, O. Reg 187/22 (Regulation) was filed almost two years later, on March 11, 2022. Bill 175 along with the Regulation are designed to support the integration of home and community care into the health system, including by enabling Ontario Health Teams (OHTs) to assume responsibility for the delivery of home and community care.

Bill 175 accompanied by the Regulation, will be proclaimed into force on **May 1, 2022**, meaning that:

- Legislative amendments to the *CCA* will be proclaimed into force.
- The *Home Care and Community Services Act, 1994* (HCCSA) and its Regulations will be repealed and no longer in force.
- Most provisions of the Regulation will come into force. Some provisions will come into force on September 1, 2022.

The provincial government solicited feedback on a summary of the proposed regulatory changes from February to April 2020, to which the OHA made submissions. There was no draft Regulation at the time.

The two-year gap since initial consultations is highly unusual in these situations, however conceivable given the consultations took place during the onset of the COVID-19 pandemic.

For further details, please review the OHA Backgrounder regarding Bill 175.

Key Highlights of the Regulation

The provincial government has decided to detail aspects of the modernized framework through Regulation rather than statute. Some aspects, such as complaints, will be detailed in the Regulation, an approach that differs from the previous framework under the HCCSA.

Substantive changes through the Regulation include:

- Care Coordination and Services;
- Quality Management;
- The Patient Bill of Rights; and,
- Complaints and Appeals Process.

Ontario Hospital Association

200 Front Street West, Suite 2800
Toronto, ON M5V 3L1
416 205 1300
oha.com

LEGISLATIVE UPDATE

Continuation of Existing Framework

The provincial government has indicated that the following aspects will be carried over from the previous regulatory framework:

- All current home and community care programs;
- All school health services;
- Patient eligibility criteria for services are carried over, with expanded eligibility for in-home pharmacy and physiotherapy, transitions to long-term care homes and end-of-life care;
- Prohibitions against co-payments for professional and personal support services of all patients and for homemaking services for higher-acuity patients;
- Current service delivery roles of Home and Community Care Support Services, health service providers funded for home and community care services or their contracted service provider organizations;
- Items defined as “community services” are carried over and the following new services have been added to eligible services: behavioural supports bereavement services, education, prevention and awareness services, psychology services for persons with a long-term mental health impairment or responsive behaviours, traditional healing, and Indigenous cultural support services; and
- Direct funding will be made to not-for-profit health service providers, as well as OHTs.

Care Coordination and Services

Care Coordination

A central aim of the new legislative and regulatory framework is for OHTs and Health Service Providers (HSPs) to assume responsibility in the coordination and provision of home and community care. Under the Regulation, if a patient is receiving more than one home and community care service, the HSP or OHT must ensure that the patient or their designate is assisted in coordinating the services received. Care coordination includes: assessment; determining eligibility; developing a care plan and the coordination of multiple services.

OHTs or HSPs will not be able to provide care co-ordination services indirectly under the Regulation until amendments to this section come into force on September 1, 2022. As of September 1, HSPs or OHTs may provide care coordination services indirectly if:

- before obtaining the services, the HSP or OHT determines that the person or entity can meet the requirements set out in the Regulation and in the terms and conditions of funding from Ontario Health;
- the person or entity has the appropriate digital resources, data sharing arrangements and infrastructure in place to enable secure and effective data and other information exchanges;
- the arrangement supports equitable access to care and the appropriate use of public resources;
- the arrangement includes a process for reviewing a patient’s needs and adjusting the patient’s care plan, as appropriate;
- the HSP or OHT will maintain effective oversight over and responsibility for the care co-ordination decisions of the person or entity; and
- the person or entity providing the services on behalf of the HSP or OHT is prohibited from further assigning or sub-contracting their functions.

Ontario Hospital Association

200 Front Street West, Suite 2800
Toronto, ON M5V 3L1
416 205 1300
oha.com

The Ministry has indicated that it will work with Ontario Health, HSPs and OHTs to develop a staged implementation plan, including complementary policies and management tools to support the transition to care coordination. The OHA will continue to monitor for developments.

Service Maximums
Service maximums are removed, with the aim to focus on the best coordinated care.

Provision of Services and Funding for Services
HSPs or OHTs that are funded by Ontario Health must consider the following in the provision of services or funding to purchase services:

- The effective and efficient management of human, financial and other resources involved in the delivery of the services.
- Equitable access to the services through the application of consistent eligibility criteria and uniform rules and procedures.

Quality Management

A HSP or an OHT must ensure that a quality management system is developed and implemented for monitoring, evaluating, and improving the quality of the home and community care services provided by the HSP or OHT.

The Ministry has indicated that it would provide guidance on virtual services in policy and/or terms and conditions of funding to support quality, access and equity. The OHA will monitor for further developments on these additional policies.

The Patient Bill of Rights

The Patient Bill of Rights is updated to:

- Strengthen rights of patient and caregiver participation in care planning and delivery;
- Establish a patient's right to clear and accessible information about their care; and,
- Affirm rights to culturally safe care for Indigenous patients.

Every OHT or HSP must ensure that a copy of the Patient Bill of Rights is posted in their business premises and on their website, as well as for their provider of home and community care services.

Complaints and Appeals

Complaints
Under Bill 175, HSPs or OHTs that are funded to provide home and community care services must establish a process for reviewing complaints. The Regulation sets out the criteria for the type of complaint that would initiate the complaints process.

The Regulation also sets out the parameters of the complaints process, and requires the HSP or OHT to do the following:

- Must immediately acknowledge the complaint and immediately commence the investigation.
- Provide a response to complainant within 10 days, if known, including steps taken to address complaint.

200 Front Street West, Suite 2800
Toronto, ON M5V 3L1
416 205 1300
oha.com

- Create a written report of investigatory findings.
- Provide written outcome to the complainant within 60 days.

The HSP or OHT must also ensure that:

- Its process for reviewing complaints is made available upon request.
- The provider of home and community care services has a process for reviewing complaints, which includes a minimum:
    - A process to immediately report to the HSP or OHT any incident that resulted in harm or risk of harm to a patient.
        - In the case of the above, the process must include a requirement to:
            - immediately report the complaint to the HSP or OHT;
            - provide written record to the HSP or OHT;
            - inform HSP or OHT of the response to complaint; and,
            - provide written status updates when requested by HSP or OHT.

Appeals
Bill 175 affirms the right to appeal to the Health Services Appeal and Review Board (HSARB). The Regulation sets out the parameters for the type of decisions that may be appealed.

Investigatory Powers
Bill 175 provides additional investigation powers that would only apply to prescribed home and community care services that include residential accommodation at the premises. These additional powers would allow an investigator to enter a dwelling in specified circumstances.

Changes effective September 1, 2022

The provincial government has indicated that some provisions of the Regulation will come into force on September 1, 2022. In addition to the provisions mentioned above, the government has indicated that other future provisions will include the following:

- French language service and referral requirements applied to all funded home care providers.
- OHTs and HSPs can empower front-line providers to make timely care coordination decisions under certain circumstances.
- Patient Ombudsman's jurisdiction is expanded to include all funded home care HSPs and OHTs.

The Regulation does not provide specific guidance on how the Patient Ombudsman's jurisdiction will function with the HSARB appeal process. The OHA will seek further clarification and advise members of any developments.

Transition

Funding Agreements and Approvals
To date, all organizations funded by Ontario Health to provide home and community care services have been required to be approved by the Minister of Health or the Minister's delegate under the HCCSA to provide home care services. These funded organizations include hospital and family health

Ontario Hospital Association

200 Front Street West, Suite 2800
Toronto, ON M5V 3L1
416 205 1300
oha.com

teams providing home care. When HCCSA is repealed, funding agreements will continue but these approvals will expire.

However, under the transitional provisions, all terms and conditions of approvals that had been granted to organizations providing home and community care services under HCCSA will carry forward as deemed terms and conditions of their funding agreements with Ontario Health under the CCA.

Going forward, approvals will no longer be required. The ministry will work with Ontario Health to review applications for new home and community care funding and to update the terms and conditions of that funding.

In addition, the Ministry and Ontario Health will be working with First Nations, Inuit, and Métis partners to develop a provincial framework for traditional healing and Indigenous cultural support services.

Anticipated Impact

The Ministry has identified the following *costs* in their analysis of the regulatory impact of the new framework:

- Staff education and training on the application of the new Regulations in the context of their jobs (including for care coordinators, nurses, PSWs, and management), which is estimated to require between half-a-day to a full-days' time per year.
- Administrative/compliance costs for home and community care provider organizations of complying with the new requirements (e.g., investigating and responding to alleged abuse, harm, or risk of harm within 10 days; executing and overseeing contracts with service provider organizations; legal services fees) which is estimated to require between half-an-hour to up to 4 hours per incident.
- The combined total estimated cost for these requirements for all home and community care stakeholders over 10-year period is approximately $2.2 million. Estimated annual costs will be approximately $212, 875.

The Ministry has identified the following *benefits* in their analysis of the regulatory impact of the new framework:

- A more integrated care delivery system for patients that will support better outcomes.
- Health system cost avoidance opportunities resulting from more efficient use of heath care resources (e.g., more care in the community rather than in costly hospital/institutional alternatives).
- An important step in modernizing home and community care as part of an integrated, connected health care system centred around the needs of patients
- Cost-saving from reducing duplication of services including assessments, and integration of services that meet the needs of the population while improving patient/client safety.

Timeline and Next Steps

As noted above, the changes to the CCA under Bill 175 and the Regulation will be proclaimed into force on **May 1, 2022**. Further provisions to the Regulation are expected to be proclaimed on September 1, 2022.

Ontario Hospital Association

200 Front Street West, Suite 2800
Toronto, ON M5V 3L1
416 205 1300
oha.com

LEGISLATIVE UPDATE

The OHA will continue to monitor developments and will provide members with additional updates and support as needed.

For more information, please contact *Lindsay Carbonero, Senior Legal Advisor* at lcarbonero@oha.com or at 416-205-1305 or *Melissa Prokopy, Chief, Legal and Policy Issues* at mprokopy@oha.com