

LEGISLATIVE UPDATE

December 2023

Backgrounder

Proposed Regulatory Framework for Personal Support Workers and Related Regulatory Proposal Under the *Fixing Long-Term Care Act, 2021*

Context

Personal support workers (PSWs) are currently an unregulated profession in Ontario. To address the inconsistency in competencies within the PSW workforce, the provincial government introduced the *Health and Supportive Care Providers Oversight Authority Act* (HSCPOA Act). The HSCPOA Act, which received royal assent in June 2021, but the majority of which has yet to be enacted, established the Health and Supportive Care Providers Oversight Authority (Authority) as a regulatory body to provide oversight to PSWs. In order for the Authority to carry out its legislated objects under the HSCPOA Act, the Ministry of Health is now consulting on a proposed regulatory framework for PSWs, which can be found [here](#). The objects of the Authority include:

- establishing and maintaining educational and skills-based qualifications for each class of registrants under the HSCPOA Act, including PSWs;
- establishing and maintaining one or more visual marks or identifiers for use by registrants that can identify registrants to members of the public; and
- promoting the provision of safe, competent, ethical and high-quality health services and supportive care services by registrants to members of the public.

The Ministry of Long-Term Care simultaneously posted a regulatory proposal with respect to PSWs. Currently, Regulation 246/22 under the *Fixing Long-Term Care Act* (FLTCA) sets out staffing qualifications for PSWs in long-term care (LTC) homes. To foster consistency and a clear set of rules pertaining to PSW qualifications across the province, the Ministry of Long-Term Care is proposing amendments to the Regulation so that it aligns with the Authority's registration pathways. The Ministry of Long-Term Care's proposal can be found [here](#).

Key Highlights

The proposed regulatory framework under the HSCPOA Act sets out, among other things:

- registration requirements for multiple registration pathways;
- a complaints, discipline and appeals process;
- the creation of a PSW public register;
- a PSW Code of Ethics;
- the membership of a PSW Advisory Committee;
- the establishment of a program for providing therapy and counselling for persons who allege that sexual abuse has been committed by registrants; and

LEGISLATIVE UPDATE

- a visual mark used to designate registered PSWs.

Commentary: A notable absence from the framework regulating PSWs under the HSCPOA Act is with respect to scope of practice. Unlike the framework under the *Regulated Health Professions Act, 1991*, which includes the various companion health profession acts (e.g. the *Medicine Act, 1991*), the HSCPOA Act and proposed regulatory framework for PSWs does not provide a defined scope of practice. The scope of practice for PSWs, whether registered or unregistered, will be determined by employers. However, PSW scope of practice will continue to be limited by the controlled acts provisions in the RHPA, which provide that “controlled acts” may only be performed by members (or a delegate of a member) of a health profession regulated by the RHPA.

The proposed regulatory amendments to Regulation 246/22 under the FLTCA would allow PSWs to work in LTC if:

- they are registered with the Authority;
- if they are not registered with the Authority, but otherwise meet the requirements for registration; or
- they qualify under a prescribed exception.

I. Registration

The proposal sets out several registration pathways with varying requirements based on an applicant’s education and training. All PSWs applying for registration with the Authority will be required to provide evidence of good character and must have reasonable fluency in either English or French. Registrants will also be required to pay a registration fee, which, according to the proposal, will be lower than what is typically charged by a health regulatory college. The following are the proposed registration pathways and corresponding requirements:

1. Primary Registration Pathway

This pathway requires successful completion of a PSW program (minimum 600 hours) that meets the requirements set by the Ministry of Colleges and Universities (MCU) from an Ontario postsecondary institution, district school board or Indigenous institution and received a PSW certificate.

2. Pan-Canadian Registration Pathway

Applicants with health-related education (minimum 600 hours) from outside Ontario but within Canada that are not on a provincial registry or directory noted in the Labour Mobility Registration Pathway, below, would follow a proposed alternative pathway to register for the class of PSW, which includes an assessment to determine if the applicant meets the competencies expected of an Ontario PSW.

3. Labour Mobility Registration Pathway

Applicants from outside Ontario but within Canada that are on a provincial health-related registry or directory can register without an assessment. Currently, this includes health workers on the British Columbia Care Aide & Community Health Worker Registry, Alberta Health Care Aide Directory and Nova Scotia’s Continuing Care Assistant Registry.

LEGISLATIVE UPDATE

4. Internationally Educated Registration Pathway

Applicants that have health-related education (minimum 600 hours) from outside Canada are proposed to have similar requirements to the Pan-Canadian Registration Pathway, above, which includes an assessment to determine if the applicant meets the competencies expected of an Ontario PSW.

5. Legacy Registration Pathways

Persons hired and employed as PSWs, or providing personal support services, that do not meet the requirements of the other pathways may apply for registration through transitional legacy provisions, which will be available for a period of three years from the date the Regulation comes into force. Included in the legacy provisions is a pathway for PSWs who do not meet the prescribed educational requirements. These applicants would need to accumulate a minimum number of hours of PSW work experience, which will be set out in regulation, prior to undergoing an assessment to determine if the applicant meets the competencies expected of an Ontario PSW.

Commentary: The HSCPOA Act and the regulatory proposal provide for a voluntary approach to the oversight of PSWs, which is distinct from the traditional self-regulatory model under the RHPA that requires registration with the corresponding regulatory College in order to perform the services of a regulated health profession. For PSWs, registration with the Authority will not be mandatory in order to provide personal support services, however, employers (including hospitals and LTC homes) will be able to make registration a requirement for employment or to perform certain tasks.

The provincial government has stated that the voluntary approach to regulating PSWs “will ensure that implementation of registration does not unduly disrupt the PSW workforce” and that the regulatory impacts will be commensurate with the anticipated benefits of public protection.

II. Complaints, Discipline and Appeals Process

The HSCPOA Act sets out a complaints, discipline and appeals process for the Authority with respect to registrants. The proposed regulatory framework provides further detail on this process, including:

- the right of a registrant who is the subject of a complaint to be provided with certain information, including the complaint and relevant provisions of the HSCPOA Act, and to submit a response to the complaint;
- the circumstances where the CEO of the Authority may withdraw a complaint against a registrant;
- that an order by the CEO or Discipline Committee for revocation, suspension or conditions on a registrant’s registration takes effect immediately, regardless of any appeal; and
- the membership of the Discipline Committee and Appeals Committee, and the establishment of panels from these committees for hearings.

The proposed regulatory framework also includes a prescribed Code of Ethics for all registrants. The Code of Ethics was created with consideration to the health environments associated with PSWs and

LEGISLATIVE UPDATE

related ethical implications (e.g., working with vulnerable populations in home and institutional settings). The proposed Code of Ethics is meant to guide the work of registrants within an ethical framework and would be used by the Authority to assess complaints for potential contraventions by a registrant and determine if further actions need to be taken.

III. Additional Components of Framework

The proposal also provides additional detail with respect to a PSW public register, the visual mark used to designate registered PSWs, the membership of a PSW Advisory Committee and a program for providing therapy and counselling for persons who allege that sexual abuse has been committed by registrants.

PSW Public Register

The proposed PSW public register is modeled after the public register framework set out in the RHPA. All registrants of the Authority will be included in the public registry along with prescribed information, including but not limited to: the registrant's name and registration number, the registrant's practice information, whether the registration is active or inactive, detailed information regarding the registrant's history with the Authority's complaints, discipline and appeals process, and a summary of any current charges or findings of guilt against the registrant with respect to offences under the *Criminal Code, 1985*, the *Controlled Drugs and Substances Act, 1996* and the *Cannabis Act, 2018*.

PSW Visual Mark and Titles

Unlike the RHPA and companion health profession acts, which provide title protection for regulated health professionals, the HSCPOA Act provides for use of a visual mark to enable the public to identify registered PSWs. The regulatory proposal indicates that the visual mark will be a distinctive symbol or image established and maintained by the Authority and will be legally protected under the federal *Trademarks Act*. Registrants authorized to use the visual mark must provide valid proof of registration upon request.

The proposal acknowledges that in current practice, there are several titles used to describe those that provide personal support services. The HSCPOA Act and regulatory proposal do not seek to change this and as such, do not comment on what PSWs, registered or unregistered, may or may not call themselves.

PSW Advisory Committee

The HSCPOA Act requires an Advisory Committee for PSWs that will advise and make recommendations to the Authority's Board and CEO about issues pertaining to PSW registrants. The regulatory proposal provides additional details on the membership of the Advisory Committee.

Therapy and Counselling Program

The HSCPOA Act requires the Authority to establish a fund for the purposes of providing therapy and counselling for persons who allege that sexual abuse has been committed by registrants and provide other types of supports in relation to allegations of sexual abuse by registrants. The proposed regulation establishes this program, which covers therapy costs equivalent to 200 half-hour sessions

LEGISLATIVE UPDATE

with a psychiatrist under the Ontario Health Insurance Plan and eligible individuals can receive funding for up to five years from the start of therapy or eligibility.

IV. FLTCA Regulatory Amendment

The proposed amendments to Regulation 246/22 under the FLTCA would revise the current staffing qualifications for PSWs in LTC homes to instead allow PSWs to work in LTC if:

- they are registered with the Authority;
- they are not registered with the Authority, but otherwise meet the requirements to register with the Authority under one of the eligible registration pathways; or,
- they qualify to work as a PSW under an exception set out in the Regulation.

The Ministry of Long-Term Care is proposing to maintain several provisions within the Regulation that provide exceptions to PSW qualification requirements, or provisions that are not adequately captured under one of the Authority's proposed registration pathways including:

- allowing a registered nurse or registered practical nurse to work as a PSW if they have the adequate skills and knowledge to perform the duties of a PSW in the opinion of the Director of Nursing and Personal Care and provided they have the appropriate certificate or registration with a governing body;
- allowing a person who is enrolled in an educational program for registered nurses or practical nurses to work as a PSW if they have the adequate skills and knowledge to perform the duties of a PSW in the opinion of the Director of Nursing and Personal Care;
- allowing a person who is enrolled in a program that is a minimum of 600 hours in duration, counting both class time and practical experience time that meets the vocational standards established by the MCU, the standards established by the National Association of Career Colleges or the standards established by the Ontario Community Support Association, provided they work under the supervision of a member of the registered nursing staff and an instructor from the program;
- allowing a person who is currently enrolled in a PSW program meeting the MCU requirements and is completing the practical experience requirements of the program, provided they work under the supervision of a member of the registered nursing staff and an instructor from the program; and
- allowing a person who, by July 1, 2018, has successfully completed a PSW program that meets the MCU requirements other than the requirement to work under supervision, provided that they have provided the licensee with proof of graduation issued by the education provider.

Timeline and Next Steps

The Ministry of Health and Ministry of Long-Term Care have opened their respective regulatory proposals to public consultation until January 15, 2024. The OHA is seeking member feedback, if any, and would greatly appreciate your comments by **January 3, 2024**.

The OHA will continue to monitor developments related to these two regulatory proposals and will provide further updates as they become available. If you have any questions or wish to submit comments, please contact *Ashley MacDougall*, Legal and Policy Advisor, at amacdougall@oha.com or *Lina Neves-Mera*, Senior Policy Advisor, at lnevesmera@oha.com.