

Ministry of Long-Term Care

# FAQs—Ontario Regulation 246/22, *Fixing Long-Term Care Act, 2021*

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*This document is for informational purposes only. It is intended to highlight some of the new aspects and requirements of the Fixing Long-Term Care Act, 2021 and its regulation.*

*Licensees are responsible for ensuring compliance with the requirements of the Fixing Long-Term Care Act, 2021 and its regulation.*

*In the event of a conflict or inconsistency between this document and the Act or regulation, the Act or regulation will prevail.*

***This document does not constitute legal advice or interpretation. Users should consult their legal counsel for all purposes of legal advice and interpretation.***

Questions?

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# General

## 1. What is the new legislation and its current status?

On April 11, 2022, the *Fixing Long-Term Care Act, 2021* (FLTCA) will be in force and will regulate Ontario's long-term care home sector.

On the same day, the *Long-Term Care Homes Act, 2007* (LTCHA) will be repealed, which means it will no longer be in force.

The new Act lays the foundation for long-term care residents to receive better quality of care and enjoy a better quality of life by supporting the three pillars of the ministry's plan to fix long-term care:

- improving staffing and care;
- protecting residents through better accountability, enforcement, and transparency; and
- building modern, safe, comfortable homes for residents.

Key features of the FLTCA include:

- Aligning the language in the Residents' Bill of Rights more closely with the grounds of discrimination set out under the *Ontario Human Rights Code* and expanding the rights of residents to include support from their caregivers.
- Enshrining a commitment in law to provide a system target average of four hours of direct care per resident, per day by March 2025; and a system target average of 36 minutes of allied health care by March 2023, with interim annual targets, and requiring public reporting on progress towards the hours of direct care targets that includes a plan to address barriers if targets are not being met.
- Placing greater emphasis on resident quality of care, quality of life and continuous quality improvement, including provisions to enable the establishment of a Long-Term Care Quality Centre.
- Implementing new enforcement and compliance tools to better hold poor performing licensees to account.

- Streamlining the long-term care development and redevelopment process and providing the ministry with more flexibility in managing licence expirations.
- Providing the requisite statutory authority to regulate and provide residents with the treatment, care services or assistance required for health, wellbeing or safety, the resident and family/caregiver experience survey, quality of care, infection prevention and control program, and emergency planning, amongst other areas.

## **2. Why is the regulation being implemented in phases?**

Given the transformative nature of the new legislative framework for the long-term care sector and the ongoing impact of the pandemic, the ministry is undertaking a phased approach to regulation development.

Ontario Regulation 246/22 is the first phase of regulation development. It is focused on those provisions that are required to support the intent of the Act coming into force, operationalize key components of the Act, and address some of the critical areas related to resident care and quality of care such as:

1. Emergency planning and preparedness;
2. Resident safety, including infection prevention and control (IPAC);
3. Resident well-being and quality of care;
4. Staffing;
5. Accountability, enforcement, transparency, and quality improvement;
6. Home infrastructure and licensing; and
7. Transition provisions and technical requirements.

The second phase of regulation development (Phase 2), anticipated later in 2022, is intended to focus on elements that require more consultation with residents, families, home operators, and other experts and/or more time to build operational capacity to support successful implementation.

## **3. What are key changes introduced by the regulation?**

Key changes being introduced through the regulation include:

- Enhancing emergency planning requirements to support greater sector preparedness in the event of an emergency, including outbreaks, epidemics and pandemics.

- Defining “caregiver” and requiring all long-term care homes to have a visitor policy that respects the Residents’ Bill of Rights and ensures that caregivers continue to have access to long-term care homes during an outbreak, subject to any applicable laws.
- Expanding palliative care requirements beyond a focus based solely on end-of-life care.
- Expanding and clarifying infection prevention and control (IPAC) roles and requirements to improve resident safety and quality of life.
- Defining the calculation period for the direct care targets as part of the commitment to increase the system target average of direct care to residents provided by registered nurses, registered practical nurses or personal support workers to an average of four hours of direct care per resident, per day in four years, and to increase the system target average of allied health care professionals to 36 minutes per resident, per day by March 31, 2023.
- Clarifying the roles/responsibilities of medical directors to improve oversight.
- Additional protections for whistle-blowers.
- Addressing the amounts and criteria for issuing administrative monetary penalties as deterrents for non-compliance with the Act.
- Updating and adding definitions, like caregiver, communicable disease, and development agreement to increase transparency.

#### **4. When does the regulation come into effect?**

Unless otherwise specified in the regulation, the regulation comes into force on April 11, 2022, the same day the new Act comes into force.

Given the ongoing impact of the COVID-19 pandemic and the need for licensees to have sufficient time to learn about new/enhanced requirements and subsequently update their policies, operations, etc. to meet specified requirements in the regulation, the regulation sets out certain timeframes when select provisions are to be complied with to support licensees as they transition to the FLTCA.

Please refer to Section F: Transition Requirements and Implementation for more information.

## **5. When can stakeholders and the public expect subsequent phases of regulation development?**

The second phase of regulation development (Phase 2) is anticipated later in 2022 and would focus on elements that require more consultation with residents, families, licensees, and other experts and/or more time to build operational capacity to support successful implementation.

## **6. How will the ministry support licensees to understand the new legislative framework?**

The ministry will deliver multi-pronged knowledge transfer which may help licensees and staff as licensees work to understand the legislative and regulatory requirements required to establish and maintain their compliance with the FLTCA.

This includes plain-language webinars, fact sheets, education documents, tip sheets etc.

Where appropriate, the ministry further intends to issue applicable standards, guidance and resources to the sector.

Licensees are ultimately responsible for achieving and maintaining their own compliance with the FLTCA.

## **A. Emergency planning and preparedness**

### ***A1. Requirements related to emergency planning, preparedness, and recovery***

## **7. What regulatory requirements will be in place around emergency planning, preparedness, and recovery?**

The regulation sets out requirements designed to protect residents and others in a long-term care home in the event of an emergency. Highlights of these requirements include:

- A requirement that licensees have emergency plans for outbreaks, epidemics, and pandemics and other events (e.g., floods) and require these plans to be tested annually.
- Requirements regarding necessary elements of all emergency plans.
- Requirements around additional elements of emergency plans around outbreaks of a communicable disease, outbreaks of a disease of public health significance, epidemics or pandemics.
- Requirements regarding evacuations, provision of food and fluids during an emergency, residents' access to medication during an emergency, and added specificity regarding resources, supplies, and equipment required for an emergency.
- Requirements for licensees to set out in emergency plans the roles and responsibilities of those involved in emergency responses and identify who/which entity declares an emergency in the home and when an emergency is over.
- Requirements related to recovery from an emergency, including debriefing residents and others following an emergency and planning how to support those who experienced distress.
- A requirement regarding training on emergency plans for staff, volunteers, and students.
- A requirement for licensees to follow all applicable directives, orders, guidance, advice, or recommendations issued by the Chief Medical Officer of Health or a local public health unit.

## ***A2. Collaboration and communication***

### **8. How does the regulation address how long-term care licensees collaborate and communicate as part of emergency planning and preparedness?**

Licensees will need to meet regulatory requirements related to collaboration and communication during emergency planning such as:

- A requirement to consult with entities that may be involved in or provide emergency services in the area where the home is located including, without being limited to, community agencies, health service providers as defined in the *Connecting Care Act, 2019*, partner facilities and resources that will be involved in responding to the emergency.
- Requirement for licensees to invite the local medical officer of health or their designate and IPAC leads to be involved in emergency planning.

- Requirement for licensees to consult with the Residents' Council and Family Council, if any, on emergency plans.
- Requirement for licensees to post on a required website certain information that would be useful and, upon request, to provide physical copies of a home's emergency plans.
- Strengthened requirements regarding communication during an emergency to explicitly set out that licensees must communicate with residents, staff, Councils, and others on a frequent and ongoing basis.
- Requirement for licensees to have communications equipment to call for emergency assistance, even during a power failure.

## 9. What is a “health service provider” as defined in the Connecting Care Act, 2019?

“Health service provider” is a defined term in the *Connecting Care Act, 2019* and includes a number of persons and entities, including not-for-profit entities that operate community health centres and public hospitals.

For the definition of “health service provider”, refer directly to the *Connecting Care Act, 2019*, which is available [here](#) on e-Laws.

### A3. Emergency plans

## 10. Does the regulation require licensees to continuously improve/refine their emergency plans?

Yes. Licensees will be subject to regulatory requirements related to continuous improvement of emergency plans including:

- A requirement for licensees to offer those involved in an emergency response an opportunity to offer feedback when evaluating and updating their emergency plans.
- A requirement for emergency plans for outbreaks, pandemics, and epidemics to be tested annually.
- A requirement for licensees to review an emergency plan after it has been activated.



## **A4. Attestation**

### **11. The new Act sets out, for the first time, that licensees must attest that they have met requirements related to emergency plans. How will these requirements be operationalized?**

There are regulatory requirements related to the new attestation provisions in the FLTCA requiring licensees to attest to compliance with requirements around emergency plans, including those for epidemics and pandemics.

The regulation sets out the terms of the attestation requirements pursuant to the FLTCA in subsections 90(3) and 90(4).

Licensees are required to prepare an attestation attesting to their compliance with section 90 of the FLTCA and maintain a record of every attestation. The attestation must be completed by the home administrator and the licensee shall ensure that it is submitted annually to the Director

Refer to section 270 of the regulation for details on the requirements of the required attestation.

### **12. I am a licensee of a long-term care home. Will the ministry be providing an attestation form to meet the requirements?**

The Ministry of Long-Term Care is working to develop and post a standardized attestation form (in both English and French) on the public [Central Forms Repository](#).

### **13. Why is there such a significant focus on emergency planning in the regulation?**

The COVID-19 pandemic has highlighted the need for long-term care homes to be prepared to respond to emergencies, including those related to outbreaks, pandemics, and epidemics.

The regulation under FLTCA also responds to recommendations from the Auditor General and the LTC COVID-19 Commission as well as input received from a range of stakeholders.

The regulation supports comprehensive, robust emergency planning to protect the health and safety of residents and others in the long-term care home.

Additionally, the regulation supports regular and ongoing collaboration and communications with those involved in and affected by emergencies and ensures licensees and staff have the information and equipment they need to seek assistance.

#### **14. When do licensees need to be compliant with the requirements around emergency plans and attestation?**

Given the ongoing impact of the COVID-19 pandemic and the need for licensees to have sufficient time to learn about new and enhanced requirements and subsequently update their policies, operations, etc. the ministry has set out certain dates beyond April 11, 2022 when select provisions are to be complied with.

This approach applies for the bulk of provisions related to emergency planning and preparedness:

- Licensees' emergency plans that were in place for a home immediately before April 11, 2022 and complied with the previous requirements under the former *Long-Term Care Homes Act, 2007* would continue as the emergency plan and would be deemed to meet the requirements around emergency plans set out in the proposed regulation for three months after the coming into force of the regulation.
- Similarly, requirements around additional requirements for emergency plans for outbreaks, pandemics, and epidemics of the regulation and attestation requirements would not need to be complied with until three months after the coming into force of the applicable section.

## **B. Resident safety, well-being, and quality of care**

### ***B1. Direct Hours of Care***

#### **15. What are the annual interim targets for the hours of direct care provided?**

Beginning in the fiscal year 2021-22, the implementation targets are:

- **By the end of March 2022:** 3 hours of care provided by RNs, RPNs and PSWs and 33 minutes of AHP care.

- **By the end of March 2023:** 3 hours and 15 minutes of care provided by RNs, RPNs and PSWs and 36 minutes of care provided by AHPs.
- **By the end of March 2024:** 3 hours and 42 minutes of care provided by RNs, RPNs and PSWs and 36 minutes of care provided by AHPs.
- **By the end of March 2025:** 4 hours of care provided by RNs, RPNs and PSWs and 36 minutes of care provided by AHPs.

## **16. How specifically is the direct hours of care requirement calculated? Does the regulation address this?**

The FLTCA establishes in legislation the provincial target for a system average of four hours of direct care to be provided by registered nurses, registered practical nurses, and personal support workers per resident, per day by March 31, 2025, and also establishes a target for the direct care provided by allied health care professionals per resident, per day to a system average of 36 minutes by March 31, 2023, with interim annual targets.

For 2021-22, the calculation period would be based on data reported in the last quarter of that fiscal year; beyond that, the calculation would be based on the subsequent full years.

In 2021-22, funding to long-term care homes to increase hours of care began in November 2021 (not a full fiscal year). As this funding was not available for the full year, the calculation period for the 2021-22 fiscal year would be based on the time period when homes would have been enabled to increase their hours of direct care, e.g., the last quarter.

In subsequent years, funding would be provided to long-term care homes in a full fiscal year period and therefore the calculation period is based on a full fiscal year.

## **17. How are licensees to report data related to the direct hours of care targets?**

The ministry implemented a new quarterly staffing data survey in August 2021. Data is collected on a quarterly basis to enable better measurement and progress of tracking of staffing initiatives.

## ***B2. Caregivers & Visitor Policy***

## **18. How do the FLTCA and the regulation address visitation restrictions in long-term care homes, like those imposed during the pandemic?**

The Residents' Bill of Rights in the FLTCA was drafted in a way that makes it easy to understand.

It addresses recommendations from third-party reviews of the long-term care system in Ontario, including:

- Aligning the language in the Residents' Bill of Rights more closely with the prohibited grounds of discrimination in the Ontario *Human Rights Code*; and
- Expanding the rights of residents to include support from their caregiver(s).

The regulation defines a "caregiver" as an individual designated by a resident or the resident's substitute decision-maker with authority to give that designation, who provides one or more forms of support or assistance, including direct physical support or provides social, spiritual or emotional support, whether paid or unpaid.

This can include family members, friends, or a person of importance to a resident.

Lastly, the regulation requires all licensees to have a visitor policy that respects the Residents' Bill of Rights and ensures essential visitors, including caregivers, continue to have access to residents in long-term care homes during infectious disease outbreaks and pandemics/epidemics.

Defining "caregivers" as essential visitors aims to prevent situations where caregivers are prohibited from visiting or caring for residents, like in outbreak situations, subject to any restrictions of the Chief Medical Officer of Health.

## **19. For many months, licensees had to follow the requirements around visitor policies in the COVID-19 guidance document for long-term care homes in Ontario ("guidance document"). Do licensees have to meet requirements in both the regulation and the guidance document?**

No. As of April 11, 2022, licensees will be subject to the requirements related to visitor policies under the FLTCA.

On April 11, 2022, the ministry will update the guidance document to remove all requirements related to visitor policies.

The visitor policy in the regulation sets out minimum requirements with respect to licensees' visitor policies to ensure that essential visitors, including caregivers, continue to have access to a long-term care home during an outbreak and to ensure licensees do not prohibit or unreasonably restrict visits.

Due to the rapidly evolving nature of the pandemic, long-term care homes will require some flexibility to respond to and adapt their visitor policies depending on the situation.

Additional limitations or restrictions with respect to caregivers or visitors in a long-term care home may continue to be imposed through applicable directives, orders, guidance, advice or recommendations issued by the Chief Medical Officer of Health or a medical officer of health appointed under the *Health Protection and Promotion Act* and applicable laws.

**20. Caregivers must be at least 16 years of age under the COVID-19 guidance document for long-term care homes. Why does the caregiver definition in the regulation not specify an age limit?**

The ministry heard from a range of stakeholders that an age limit of 16 years excludes other family members, friends or persons of importance to a resident such as children or grandchildren who may also provide essential supports to residents.

In place of an age limit, the regulation requires any individual under the age of 16 years to receive approval from a parent or legal guardian to be designated as a resident's caregiver.

**21. What type of training or education will caregivers be required to complete to ensure the safety and wellbeing of residents?**

Infection prevention and control (IPAC) training is essential to ensure the safety and wellbeing of residents.

Requirements for IPAC training for caregivers and other visitors are set out in the IPAC Standard which is issued under the authority of the Act and regulation and will be in effect on April 11, 2022.

This includes regular IPAC training and education that is appropriate to their role for: residents, staff, support workers, caregivers, family members/friends, volunteers and visitors.

## **22. How will residents and families be kept aware of their long-term care home's visitor policy?**

The regulation requires licensees to provide the current version of their visitor policy to the Residents' Council and Family Council, if any.

The current version of the visitor policy would also have to be:

- posted in the home and communicated to residents,
- included in the resident information package upon admission to a home, and
- posted on the home's website.

## **23. Will licensees be required to keep track of caregiver designations?**

Yes. The regulation sets out that licensees are to have a process for documenting and keeping a written record of:

- the designation of a caregiver; and
- the approval from a parent or legal guardian to permit persons under 16 years of age to be designated as a caregiver, if applicable;

## **24. How many caregivers can be designated per resident? How often can caregiver designations be changed?**

The regulation does not specify any limitations with respect to the number of caregivers a resident can designate or the frequency of changing caregiver designations.

Licensees have the discretion to set out their own parameters on the number of caregivers who can be designated per resident and the processes for changing caregiver designations, subject to applicable directives, orders guidance, advice or recommendations issued by the Chief Medical Officer of Health or medical officer of health appointed under the Health Protection and Promotion Act and applicable laws.

These parameters should respect a resident's right to receive visitors, including ongoing safe support from their caregivers, while reflecting a home's operational considerations.

## **25. Can licensees end a visit or prohibit a person from visiting a long-term care home in response to non-compliance with a home's visitor policy?**

As per the Residents' Bill of Rights under the *Fixing Long-Term Care Act, 2021*, homes must fully respect and promote a resident's right to receive visitors, including a resident's right to ongoing and safe support from their caregivers.

It is expected that licensees will provide for residents to see visitors in accordance with Chief Medical Officer of Health Directive #3 (while in effect), ministry policy and guidance, in addition to all other applicable laws and will not place unreasonable restrictions on residents' ability to do so.

Under the FLTCA, licensees are also required to ensure that the long-term care home is a safe and secure environment for residents.

Licensees have the discretion to end a visit or prohibit a visitor (including caregivers) from visiting in response to repeated and flagrant non-compliance with a home's visitor policy and where a visitor's behaviour may impact the licensee's ability to ensure a safe and secure home.

In exercising discretion, before ending a visit or prohibiting access by a visitor, licensees are encouraged to consider:

- Whether the visitor has been given sufficient time and information to comply with the licensee's visitor policy.
- The nature, severity, and frequency of non-compliance.
- The potential impact of the visitor's non-compliance on the health and safety of residents, staff, and other visitors in the long-term care home.
- The potential impact of discontinuing visits on the resident's clinical and emotional well-being.

Licensees should document where they have ended or prohibited visitation due to non-compliance and are encouraged to consult the Residents' Council and the Family Council (if any) in the home on procedures for addressing non-adherence by visitors.



### ***B3. Infection Prevention and Control***

#### **26. How does the regulation protect residents, families and staff on matters related to infections?**

The regulation includes a comprehensive set of requirements related to infection prevention and control (IPAC) programs in long-term care homes, including the requirement to have an IPAC lead with focused qualifications and responsibilities.

#### **27. What IPAC requirements are included in the FLTCA and the regulation?**

The FLTCA and the regulation requirements include:

- Additional required training and education for designated IPAC leads.
- Current certification in infection control from the Certification Board of Infection Control and Epidemiology for designated IPAC leads three years after the regulation comes into force.
- Designated IPAC leads to work regularly in that position on site for at least the specified required times per week.
- Requirement for the development and implementation of a quality management program to assess and improve IPAC in the home.
- A requirement that the IPAC program is implemented in a manner consistent with the precautionary principle as set out in the standards and protocols issued by the Director under subsection 102 (2) of the regulation and the most current medical evidence.
- The requirement that the licensee shall implement any standard or protocol issued by the Director with respect to infection prevention and control.

#### **28. What supports are available to licensees to understand and comply with IPAC requirements?**

The Infection and Prevention Control (IPAC) Standard for long-term care homes will be issued by the Director pursuant to section 102(2)(b) of the regulation and includes detailed IPAC programming requirements for licensees, aligned with current evidence and best practices.



As of April 11, 2022, the IPAC Standard is in effect and enforceable under the FLTCA. Licensees will be required to comply with the IPAC Standard as of April 11, 2022.

The ministry will be developing informational and other resources for licensees relating to the implementation of the IPAC Standard.

Additional resources will address specific requirements in the IPAC Standard such as the requirement for an ethical framework for the IPAC Program.

As well, further educational webinars and other events will be scheduled in the coming months.

### **29. What is the purpose of the IPAC standard?**

The IPAC Standard mandates certain requirements that licensees must follow for IPAC in long-term care homes in Ontario, including requirements related to: IPAC program evaluation, hand hygiene, symptom surveillance and infectious disease prevention and management.

These requirements are in addition to other IPAC requirements that licensees are required to comply with, including those in the FLTCA, the regulation and the Minister's COVID-19 Long-Term Care Home Surveillance Testing and Access to Homes Directive.

The regulation provides that a licensee is required to implement any standard or protocol issued by the Director with respect to infection prevention and control.

Effective April 11, 2022, licensees will be required to comply with the IPAC Standard, which is grounded in current evidence and best practices.

Each section of the IPAC Standard contains requirements for evidence-based IPAC programming and IPAC, which licensees must follow.

### **30. What are the main sections of the IPAC Standard?**

The main sections of the IPAC Standard include:

- IPAC Program
- IPAC Resources
- Surveillance

- Outbreak Preparedness and Management
- IPAC Policies and Procedures
- Personal Protective Equipment (PPE)
- Training and Education
- Regular Evaluation and Quality Improvement
- Routine Practices and Additional Precautions
- Hand Hygiene Program
- Immunization and Screening

### **31. What Is the IPAC Standard based on?**

The IPAC Standard is based on guidance from IPAC Canada, Public Health Ontario, the Provincial Infectious Diseases Advisory Committee, and others.

It was also developed based on current advice from expert IPAC practitioners with direct experience in long-term care and other healthcare settings.

The IPAC Standard will be updated regularly when related evidence or best practice change.

### ***B4. Palliative Care***

#### **32. Do the new palliative care requirements in the FLTCA and its regulation reflect the shift in practice towards a broader, more holistic approach to palliative care?**

Yes. The new palliative care requirements under the FLTCA and its regulation reflect a shift in practice towards a broader, more holistic approach to palliative care.

This broader, more holistic approach is consistent with the [\*Ontario Provincial Framework for Palliative Care\*](#), which was developed based on consultation with community partners and stakeholders, including advisors from hospitals, primary care, long-term care homes, hospices, home and community care providers, health care associations and organizations as well as individuals and their families and caregivers from across Ontario.

Under the regulation the palliative care options made available to a resident must not be limited to end-of-life care but instead, based on the interdisciplinary assessment of a resident's palliative care needs for their plan of care.

It must include at a minimum, quality of life improvements, symptom management, psychosocial support, and, if appropriate, end-of-life care.

For further information about the palliative care requirements under the FLTCA and its regulation, please refer to the palliative care factsheet.

As we move forward, the ministry is committed to working with the broader health sector to identify and help licensees access existing tools and resources for residents, families, caregivers as well as long-term care home staff and leadership to improve awareness about the shift in practice towards a broader, more holistic approach to palliative care.

### **33. Where can I access information and resources about palliative care?**

Information and resources about palliative care are available on the [Ministry of Health and Ministry of Long-Term Care website](#).

Additional information and training resources may be available through:

- [Ontario Health \(Ontario Palliative Care Network\)\\*](#)
- [Home and Community Care Support Services\\*](#)
- [Ontario Centres for Learning, Research and Innovation\\*](#)
- [Ontario Long-Term Care Association\\*](#)
- [AdvantAge Ontario\\*](#)
- [Ontario Long-Term Care Clinicians\\*](#)
- [Hospice Palliative Care Ontario\\*](#)
- [Ontario Caregiver Organization\\*](#)

\*Please note that the Ministry of Long-Term Care does not guarantee the accuracy of the content on external sites, nor does it endorse the opinions and positions expressed, either in related materials or on external sites.

## ***B5. Food and Nutrition***

### **34. How does the regulation impact food and nutrition requirements in long-term care homes?**

The regulation aims to provide more flexibility in menu planning at the home level to give residents more choice about what and when they eat, reduce food waste and streamline menu planning requirements.

It requires that the licensee's registered dietitian and nutrition manager evaluate the menu cycle, and the registered dietitian approve the menu cycle to ensure it meets residents' nutritional needs.

It also requires licensees to ensure meals and snacks are served at times agreed upon by their Residents' Council and the Administrator or Administrator's designate.

The requirement for licensees to follow the Canada's Food Guide is removed, as it is not recommended for the long-term care resident population.

These requirements will come into effect on July 11, 2022, replacing the current requirements which continue to be in effect until then.

## c. Staffing

### *C1. Medical Directors*

#### **35. Are there changes to the role of Medical Directors in long-term care homes?**

The regulation clarifies and enhances the role of the Medical Director to include:

- Oversight of clinical care, quality of care
- Authority to review and **approve** clinical policies and procedures
- Minimum hours of attendance on site
- Training requirements

These changes clarify the role and authority of the Medical Director and empower them to make the most active contribution possible to the quality of clinical care for residents.

A licensee is required to enter into written agreement with the home's Medical Director that the Medical Director will complete the *Ontario Long Term Care Clinicians' Medical Director* course within 12 months of beginning their duties and responsibilities, or for existing Medical Directors, within 12 months of the applicable section of the regulation coming into force.

## **C2. Staff Screening Measures**

### **36. Does the regulation include enhanced screening requirements to further protect the safety and security of long-term care residents?**

Yes. The regulation introduces enhanced screening requirements for staff, volunteers, and members of the licensee's board of directors, its board of management or committee of management or other governing structure.

These include restrictions on hiring staff, accepting volunteers, and on members of a licensee's board of directors, its board of management or committee of management or other governing structure based on offences against vulnerable individuals, and acts of professional misconduct.

### **37. Under the regulation, what types of offences would restrict an individual from working in a long-term care home?**

Examples of prescribed offences under the regulation include any offence under the FLTCA, the *Long-Term Care Homes Act*, the *Nursing Homes Act*, the *Charitable Institutions Act* or the *Homes for the Aged and Rest Homes Act*, any offence referenced under the specified section of the *Criminal Code (Canada)*, and any offence under the *Cannabis Act (Canada)*, the *Controlled Drugs and Substances Act (Canada)* or the *Food and Drugs Act (Canada)*.

Other examples of prescribed offences under the regulation include any other provincial or federal offence if the offence involved: improper or incompetent treatment or care; or abuse or neglect of a vulnerable person that resulted in harm or a risk of harm of any kind to the vulnerable person, including but not limited to physical, emotional, psychological, or financial harm, or a misuse or misappropriation of a vulnerable person's money.

The prohibition is time limited and would be in place until five years after the end of the person's sentence, if any.

**38. Under the regulation, what types of professional misconduct would restrict an individual from working in a long-term care home?**

The regulation sets out the prescribed acts of professional misconduct. Some of these acts include an act of misconduct as a member of a health profession or as a member of a regulated profession as prescribed.

The prohibition would be time limited and would be in place until five years after the consequences, if any, for the professional misconduct expired.

## **D. Accountability, enforcement, transparency and quality improvement**

### ***D1. Administrative Monetary Penalties***

**39. The regulation includes administrative penalties as an enforcement tool. What does this mean for licensees?**

Administrative monetary penalties (AMPs) are a type of enforcement tool intended to encourage compliance and increase accountability for repeated non-compliance with the new Act.

Deterring non-compliance can lead to improved quality of life for residents.

AMPs will apply to licensees that do not follow compliance orders issued by the Director or Inspectors.

AMPs will also apply to licensees that receive recurring non-compliance orders for the same issue to ensure repeat bad actors are held accountable and encouraged to comply with the new law.

**40. How much money would a licensee need to pay?**

There are three AMP amounts:

1. \$11,000 for specified instances of critical-risk non-compliance

2. \$5,500 for high-risk instances of non-compliance
3. \$1,100 for all other instances of non-compliance

These amounts would multiply if the licensee does not comply with the same section of the legislation that resulted in the initial AMP within a three-year period.

#### **41. How are licensees expected to pay these penalties?**

As part of a licensee's funding agreement with the ministry, licensees must not use funding dedicated for care towards anything other than its designated purpose.

Administrative monetary penalties must be paid either through non-government funding or the Other Accommodations envelope.

If licensees choose not to follow these requirements of funding, the Director of Inspections can order that funding be returned or withheld.

#### **42. Why should municipal and not-for-profit homes pay the same penalties as for-profit homes?**

Enforcement and compliance tools are meant to apply equally to all licensees to ensure consistency and fairness in application. The regulation stipulates three different penalty amounts, depending on the risk created by the non-compliance. Any licensee can seek a reduction for any administrative penalty that they perceive to be excessive or punitive for the home.

#### **43. Can a licensee get more than one AMP for the same problem during one inspection?**

A compliance order is typically issued only for the most serious requirement related to a finding of non-compliance.

However, maintaining some flexibility will allow the ministry to address serious instances of non-compliance in a proportionate and escalating manner, as one incident could involve several serious failures to comply.

The FLTCA also provides the ability to lower an AMP amount based on circumstances and whether it would be punitive.

#### **44. What happens if a licensee continues to not comply with the rules?**

Administrative monetary penalties are part of an escalating enforcement regime to address repeated non-compliance. Provincial offences, suspension, and termination of licences are tools that are available to use for enforcement when multiple AMPs have not resulted in compliance.

#### **45. What happens if a licensee disagrees with an AMP or other compliance order?**

In the case of AMPs issued by an inspector, a licensee can ask the Director to review a compliance order or an AMP notice. During this process, the requirement to pay is put on hold until the matter is resolved.

The Director may rescind, confirm, or alter the order or notice of an AMP, and the Director may substitute their own order or notice for that of an inspector. This can include reducing the AMP.

If a licensee still disagrees with the Director's decision following this review, they can appeal the outcome of the review to the Health Services Appeal and Review Board.

In the case of AMPs issued by the Director in the first instance, the licensee can appeal these straight to the appeal board.

#### **46. Will the public know if a long-term care home has been issued an AMP?**

Yes. AMP notices would be included in inspection reports, which are publicly available. This would include AMP notices issued on further instances of non-compliance.

### ***D2. Quality improvement***

#### **47. What is the Continuous Quality Improvement Initiative?**



As part of the government's plan to fix long-term care, the FLTCA and its regulation place greater emphasis on resident quality of care, quality of life, and continuous quality improvement.

A licensee must implement a continuous quality improvement initiative for a long-term care home. As part of the continuous quality improvement initiative, the FLTCA and its regulation require every licensee to:

- establish an interdisciplinary quality improvement committee, within six months after the coming into force of the applicable section of the regulation under the FLTCA;
- ensure the home's continuous quality improvement initiative is co-ordinated by a designated lead;
- prepare an interim report on the continuous quality improvement initiative for the home for the 2022-23 fiscal year, within three months after the coming into force of the applicable section of the regulation under the FLTCA, and publish the report on its website, subject to the regulatory requirements for websites;
- prepare a report on the continuous quality improvement initiative for the home each fiscal year and publish the report on its website, subject to the regulatory requirements for websites; and,
- maintain a record setting out the names of the people who participated in evaluations of improvements in the continuous quality improvement report.

#### **48. Does the continuous quality improvement report duplicate the Quality Improvement Plan (QIP) required under the Service Accountability Agreement between each licensee and Ontario Health?**

A licensee must comply with the FLTCA and its regulation. The FLTCA and its regulation do not prevent a licensee from integrating their QIP into their continuous quality improvement report to streamline public reporting requirements.

Over the upcoming year, the ministry will continue to work with Ontario Health and the long-term care sector to identify opportunities to further strengthen and align quality improvement efforts.

#### **49. Does the continuous quality improvement report need to be submitted to the ministry?**

No. Licensees are not required to submit the continuous quality improvement report to the ministry.

A copy of each continuous quality improvement initiative report is to be provided to the Residents' Council and Family Council, if any, and published on the home's website.

### ***D3. Whistle-blower protections***

#### **50. How does the regulation protect whistle-blowers?**

The regulation expands whistle-blower protections to protect individuals who disclose information to a Residents' Council or Family Council, if any.

This aims to ensure that these groups, which residents are likely to be engaged with, can continue to support residents and families in reporting of abuse, harm, and neglect to their members without fear of retribution to the whistle-blower.

### ***D4. Complaints***

#### **51. What new measures/requirements are being introduced to address complaints?**

The regulation requires licensees to provide information about the ministry and the Patient Ombudsman to individuals who have complained in order to ensure they have the appropriate contact information and may contact the government or the Patient Ombudsman, if they choose.

The licensee must provide the individual with the ministry's toll-free number for making complaints, contact information for the Patient Ombudsman, and notification that the complaint was forwarded to the ministry (where applicable).

Complaints that allege harm or risk of harm to one or more residents, including but not limited to physical harm, must be immediately forwarded by the licensee to the Director.

The regulation also enables the ministry to continue monitoring and addressing outstanding complaints and orders issued under the former *Long-Term Care Homes Act, 2007*.

## E. Home Infrastructure and licensing

### E1. Home infrastructure and licensing

#### 52. Does the regulation introduce changes to provisions related to home infrastructure and licensing?

Yes, the regulation:

- Requires licensees to ensure that resident bedrooms are served by air conditioning by June 22, 2022, unless limited conditions for exemption are met.
- Includes a definition of “controlling interest” to close a loophole that allows several persons who are not associates (e.g., three friends) to take over a home's licence without requiring any approvals.
- Defines “design manual” to preclude the need to make regulatory amendments each time the manual is updated and sets out requirements for ongoing compliance with the design manual within Development Agreements.

#### 53. How have the rules changed for admissions during a pandemic?

There are two main changes:

The first change relates to hospital patients who were admitted to or accepted admission to a home during the COVID-19 pandemic while Ontario Regulation 79/10 under the former Long-Term Care Homes Act, 2007 was in effect would be placed in the “crisis” category for transfer to their first-choice home.

These residents made placement decisions based on the provisions in effect at that time (i.e. a person accepted a home in hopes that the pandemic pressures would soon improve and they would qualify for “crisis” for transfer to their first-choice home).

Persons applying for admission to a home from a hospital once the regulation under the FLTCA is in effect do not qualify for “crisis” for transfer to their first-choice home and would be aware of this when making placement decisions.

Secondly, six months after the regulation comes into effect, the flexibility for the assessments/application will continue; however, applicants in a hospital would no

longer be expedited for admission to a home and instead would be prioritized based on the non-pandemic ranking rules.

The non-pandemic ranking rules allow for hospital applicants to qualify for “crisis” admissions if a hospital is experiencing severe capacity pressures verified by Ontario Health. Otherwise, hospital patients would typically be placed in lower-ranking categories on the waiting list.

## F. Transition Requirements and Implementation

### F1. Effective date

#### 54. Are the FLTCA and all provisions of the regulation effective as of April 11, 2022?

Most sections in the FLTCA and its regulation come into force on April 11, 2022. For these, licensees are required to comply with the requirements set out in FLTCA and regulation on that day and going forward.

To allow licensees time to prepare for and operationalize some of the new requirements, some specific requirements in the regulation specify the timeframe by which select provisions are to be complied with and proposes a different commencement date for the provisions specific to menu planning, for example.

Examples of areas that would allow for a specified timeframe for licensees to comply with certain requirements, include:

- Requirement to have a **public website** – compliance would be required three months after the coming into force of the applicable section of the regulation.
- Requirements related to **emergency plans** – licensees' emergency plans that comply with the former *Long-Term Care Homes Act, 2007* would be deemed to meet the requirements around emergency plans for three months after the coming into force of the regulation.
- Similarly, additional requirements for **emergency plans for outbreaks**, pandemics, and epidemics and attestation requirements would not need to be complied with until three months after the coming into force of the applicable sections of the regulation.
- Requirements around **menu planning** have a different commencement date that will come into force on July 11, 2022.

- Continuous **quality improvement initiative reports**:
  - An *interim report* on the continuous quality improvement initiative for the 2022/23 fiscal year only is to be prepared within three months after the applicable section of the regulation comes into force;
  - The first continuous quality improvement initiative *full report* is to be prepared for the fiscal year ending March 31, 2023, no later than three months after the end of that fiscal year.
- An interdisciplinary **continuous quality improvement committee** must be established within six months after the coming into force of the applicable section of the regulation.
- A licensee must comply with the requirements for programs respecting **palliative care** and the palliative care philosophy within six months after the coming into force of the applicable section of the regulation.
- Training requirements for **Medical Directors** – compliance for the licensee to enter into a written agreement with the home's Medical Director that the Medical Director to complete the *Ontario Long Term Care Clinicians' Medical Director* course would not be required until 12 months after the applicable section of the regulation comes into force for existing Medical Directors. Medical Directors hired after the provisions come into force will have up to 12 months from when they are hired to comply with the provisions.
- Requirements for **IPAC lead qualifications** – compliance with the requirement for IPAC leads to have current certification in infection control from the Certification in Infection Control (CIC®; awarded by the Certification Board of Infection Control and Epidemiology, Inc. (CBIC)) does not need to be complied with until three years after the applicable section of the regulation comes into force. However, other requirements related to training and education would come into force immediately.
- **Declaration requirements** for current staff and volunteers in cases when a pandemic does not exist are to be provided to the licensee within one month after the staff member first works, or volunteers, at the home after the applicable section comes into force, subject to limited exceptions.
- For members of a home's governing structure [e.g., board member] in cases when a pandemic does not exist, **declarations** are to be provided to the licensee within one month after the applicable section of the regulation comes into force, subject to limited exceptions.
- A **police record check** for staff hired or a volunteer accepted during a pandemic would be required three months after the section comes into force.

- Requirements for **police record check** for individuals who are members of the licensee's governing structure when the applicable section of the regulation comes into force are to provide the licensee with a police record check that complies with the requirements of the regulation within six months after the applicable section of the regulation comes into force.
- Requirements for police record check for an individual who becomes a member of a licensee's governing structure and is occupying this position as part of their role as an elected municipal official is required to provide the licensee with a police record check conducted no earlier than six months prior to the date the individual's term of office begins and no later than one month after their term of office begins (current elected officials will not be required to satisfy the police record check requirements if their term of office ends November 14, 2022).

### **55. Why does the regulation under the FLTCA include reference to the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*?**

To support residents and operational continuity, the regulation under the FLTCA includes two transition provisions that are tied to the expiry of Ontario Regulation 95/20 (Streamlining Requirements for Long-Term Care Homes) under the *Reopening Ontario Act, 2020*.

- Requirement for a care conference by the team providing a resident's care to be held within three months of Ontario Regulation 95/20 ceasing to be in force, if no care conference has been held since the resident was admitted or if a resident's last care conference was conducted more than one year prior to the date of Ontario Regulation 95/20 ceasing to be in force.
- Requirement for licensees to ensure that the annual physical exam for residents is held within three months of Ontario Regulation 95/20 ceasing to be in force, if an annual physical examination has not been held in the year before the ceasing to be in force.

**56. Ontario Regulation 95/20 (Streamlining Requirements for Long-Term Care Homes) under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* provides flexibility around staffing and administration of drugs. Does the regulation under the FLTCA provide similar flexibility?**

The regulation under the FLTCA provides similar flexibility to foster operational continuity and maintain safety and security for residents by providing that licensees are not required to comply with:

- A requirement set out in the Act or the regulation around qualifications for members of staff until 12 months after the coming into force of the applicable transitional section of the regulation, as long as the person holding the position, in the reasonable opinion of the licensee, has the adequate skills, training, and knowledge to perform the duties required of that position.
- The requirements in the Act and regulation around minimum staffing hours until six months after the coming into force of the applicable section of the regulation, as long as all care requirements associated with the position are met. Note: this does not apply to the requirements under section 8 or 9 of the Act).
- The requirements of a specific subsection of the regulation related to the administration of drugs until 12 months after the coming into force of the applicable transition section of the regulation, as long as, where the administration involves the performance of a controlled act set under subsection 27(2) of the *Regulated Health Professions Act, 1991*, the person administering the drug is authorized to perform the controlled act under the relevant health profession Act.

*For further information on important dates related to the implementation of requirements under the FLTCA, please refer to the document: "Important Timelines and Dates Associated with Ontario Regulation 246/22 under the Fixing Long-Term Care Act, 2021."*