

Ministry of Long-Term Care

# Compliance and Enforcement

As of April 11, 2022, the *Fixing Long-Term Care Act, 2021* (FLTCA) and Ontario Regulation 246/22 have replaced the previous *Long-Term Care Homes Act, 2007* (LTCHA) and Ontario Regulation 79/10 as the governing legislation for long-term care in Ontario.

The FLTCA includes new and strengthened compliance and enforcement tools to improve resident care and safety. These tools will be used as part of the Ministry of Long-Term Care's (the ministry's) inspection program, which aims to hold licensees to account for the care they provide.

The ministry's inspection program focuses on ensuring that licensees comply with the FLTCA and protecting and promoting the quality of care and quality of life for residents. If an inspector or the Director finds non-compliance, they take into account the scope and severity of the non-compliance, and the compliance history of a licensee to determine the appropriate compliance action(s) to take under the FLTCA.

The new compliance and enforcement regime under the FLTCA was developed using modern regulator principles, including a broad range of compliance measures and proportional responses to specific instances of non-compliance.

Details on each of the new and updated measures under the FLTCA are included on the following pages.

*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.***

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Questions?

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# Compliance and Enforcement Tools under the FLTCA

- Remedied Non-compliance **[NEW]**
- Written Notifications
- Compliance Orders **[Updated]**
- Administrative Monetary Penalties **[NEW]**
- Order Requiring Management **[Updated]**
- Increased Fines for Offences **[NEW]**
- Investigations
- Licence Suspension and Supervisor **[NEW]**

## Remedied Non-compliance

This compliance tool provides a way for an inspector to address very low-risk instances of non-compliance during an inspection without having to take further compliance action, such as issuing a written notification or a compliance order.

This tool can only be used by an inspector when a licensee is able to demonstrate they have remedied the non-compliance during an inspection and the inspector is satisfied that the non-compliance caused no harm and created no risk of harm to a resident.

The inspector will document the non-compliance and the remedy in the inspection report.

## Written Notifications (Removal of Voluntary Plan of Correction)

Unlike the (former) LTCHA, the FLTCA does not allow the inspector to issue a voluntary plan of correction as a possible compliance action.

However, it is still possible for an inspector to issue a written notification to communicate a finding of non-compliance.

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## Compliance Orders

Upon finding non-compliance, an inspector or the Director may issue a Compliance Order that requires a licensee to:

- Do anything or refrain from doing anything to achieve compliance with the FLTCA.
- Prepare, submit and implement a written plan for achieving compliance.

The FLTCA includes two new aspects of a Compliance Order that may direct licensees to take certain action, such as:

- Arrange for specific staff to receive training.
- Allow the ministry/agents/contractors to perform any work or activity at the LTC home at the licensee's expense.

## Administrative Monetary Penalties

The FLTCA sets out that the Director or an inspector can issue an administrative monetary penalty (AMP) if the licensee has not complied with a requirement under the FLTCA.

AMPs are a type of enforcement tool intended to encourage compliance and increase accountability for repeated non-compliance through non-punitive monetary penalties.

The regulation sets out how and when AMPs will be administered, along with a table setting out specific AMP amounts.

An AMP **must** be issued by either the Director or an inspector if the licensee:

- Has not complied with a compliance order made under the FLTCA; or
- Has not complied with a requirement under the FLTCA and it results in a compliance order being issued and the licensee has received at least one other compliance order for non-compliance with the same requirement within a three-year period.

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In addition, an inspector can refer a matter to the Director, who can issue an AMP when deemed appropriate.

If a licensee disagrees with an AMP notice issued by an inspector, they can ask the Director to review it. During this process, the requirement to pay the AMP is put on hold until the matter is resolved.

The Director may confirm the notice or change it. 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.

### **Order Requiring Management**

The FLTCA expands the grounds under which the Director may order a licensee to retain a temporary manager to assist in managing the LTC home.

Under the FLTCA, the Director can require a temporary manager if they determine there are circumstances present in an LTC home that are harmful to the health, safety or welfare of residents; or if there is an emergency situation, for example an outbreak of disease or a pandemic.

The FLTCA also specifies that a temporary manager may be brought in to manage the entire operations of the LTC home or to manage a specific issue related to the operation of the LTC home such as infection prevention and control, financial management or clinical operations.

### **Increased Fines for Offences**

Maximum fines upon conviction of an offence under the FLTCA have been doubled from those in the LTCHA. If convicted, an individual could face a fine of up to \$200,000 for the first offence and up to \$400,000 for a subsequent offence. If

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convicted, a corporation could face a fine of up to \$500,000 for a first offence and a fine of up to \$1,000,000 for a subsequent offence.

## **Investigations**

The Ministry is expanding its capacity to investigate and lay charges for offences under the FLTCA, where appropriate.

## **Licence Suspension and Supervisor**

The Minister of Long-Term Care or the Director may suspend a licence and appoint a Long-term Care Home Supervisor to take over the operations of the home. The appointment of a Supervisor will allow the ministry full control of the home until the suspension is lifted, the licence expires or is revoked, or another solution is found.

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